



January 25, 2008

## HOUSE BILL No. 1360

DIGEST OF HB 1360 (Updated January 23, 2008 4:09 pm - DI 101)

**Citations Affected:** IC 4-6; IC 6-1.1; IC 6-3; IC 6-3.1; IC 23-2; IC 24-4.5; IC 24-5; IC 24-9; IC 25-34.1; IC 27-7; IC 32-29; IC 34-30; noncode.

**Synopsis:** Mortgage lending issues. Requires the homeowner protection unit (unit) within the attorney general's office to establish a toll free telephone number to receive calls from persons having information about suspected fraudulent transactions and practices concerning residential real estate transactions. Requires the unit to share information reported by callers to the telephone number with appropriate law enforcement and regulatory agencies. Requires the department of local government finance to revise the sales disclosure form for real estate conveyances to include: (1) the application forms for the homestead credit and the mortgage property tax exemption; and (2) the name and license or certificate number of each regulated professional involved in the transaction. Requires county assessors to submit sales disclosure form data to the department of insurance. Requires the department of insurance to establish and maintain a data base that serves as a central repository for the sales disclosure form data submitted. Requires the department of insurance to make the information in the data base available to appropriate law enforcement and regulatory agencies. Requires a closing agent to: (1) provide to a customer, at least 48 hours before the closing of a home loan transaction, a form prescribed by the department of local government finance that describes certain property tax deductions and credits; (2) require the customer, at the time of the closing, to complete and sign either a sales disclosure form, in the case of a first lien purchase money mortgage transaction, or the application form for the mortgage property tax exemption, in the case of a refinancing; and (3) collect and file the

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**Effective:** Upon passage; July 1, 2008; January 1, 2009.

**Bardon**

January 16, 2008, read first time and referred to Committee on Financial Institutions.  
January 24, 2008, reported — Do Pass.

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completed and signed form with the appropriate county official. Provides that at the time of the closing, the closing agent must: (1) inform the customer of certain other property tax deductions for which the customer may be eligible; (2) offer to provide the customer with the forms necessary for the person to claim the deductions; and (3) provide to the customer any forms requested by the customer. For purposes of the adjusted gross income tax, excludes from a taxpayer's adjusted gross income an amount equal to the amount of any debt forgiven by a creditor with respect to mortgaged property of the taxpayer that is sold during the taxable year: (1) in a foreclosure proceeding; or (2) for an amount less than the amount of the outstanding mortgage obligation. Provides a credit against the financial institutions tax or the adjusted gross income tax for a taxpayer that: (1) issues or brokers at least 25 home loans during the taxable year; and (2) incurs certain qualified home loan costs. Provides that the amount of the credit is the lesser of: (1) the taxpayer's qualified home loan costs; or (2) the amount of the taxpayer's tax liability. Specifies that evidence of compliance with the licensing and registration requirements for loan brokers, originators, and principal managers may include a national criminal history background check by the Federal Bureau of Investigation (FBI). Specifies that the securities commissioner (commissioner) shall require each: (1) equitable owner of a loan brokerage business; (2) director, manager, or officer of an applicant for licensure as a loan broker; and (3) applicant for registration as an originator or a principal manager; to submit fingerprints for a national criminal history background check by the FBI. Prohibits the commissioner from releasing the results of a national criminal history background check to a private entity. Allows the commissioner to designate a multistate automated licensing system and repository (system) as the sole entity responsible for processing applications for: (1) licenses for loan brokers; and (2) certificates of registration for originators and principal managers. Increases the amount of the bond that a licensed loan broker must maintain with the commissioner from \$50,000 to \$100,000. Eliminates the exemption from the loan broker statute for persons authorized to make loans on behalf of, or insured by, certain federal agencies. Specifies that a loan broker is subject to the state statute requiring disclosure of a breach of the security of any records: (1) maintained by the broker; and (2) containing the personal information of a borrower or prospective borrower. Prohibits loan brokers, originators, and principal managers from disposing of unencrypted, unredacted personal information with respect to borrowers or prospective borrowers without first taking certain actions to render the personal information illegible or unusable. Prohibits a person from performing specified acts in connection with a contract for the services of a loan broker. Provides that first lien mortgage transactions are subject to regulation under the Uniform Consumer Credit Code (UCCC). Provides that not more than 25% of the credit service charge or loan finance charge for a mortgage transaction may be precomputed. Provides that for a first lien mortgage transaction, the parties may contract for a delinquency charge of not more than five percent (5%) of the contracted payment amount. Provides that prepayment penalties and fees may not be charged with respect to a subprime mortgage transaction. Requires a creditor or mortgage servicer to respond to a written offer made in connection with a proposed short sale of mortgaged property not later than 10 calendar days after the date of the offer. Provides that a creditor that offers a nontraditional or subprime mortgage transaction must exercise prudent underwriting practices to determine the debtor's reasonable ability to repay the mortgage transaction at its fully indexed rate. Requires a creditor that offers a subprime mortgage transaction to establish an escrow account for the payment of real estate taxes and insurance owed in connection with the subprime mortgage. Requires a person regularly engaged as a creditor in mortgage transactions to post a bond of at least

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\$300,000 with the department of financial institutions. For an adjustable rate mortgage, requires a creditor to provide a one page disclosure document that provides the following information: (1) The mortgage transaction's fully indexed rate. (2) The maximum monthly payment that could be required under the terms of the mortgage transaction, including amounts owed for taxes and insurance, if the creditor will establish an escrow account for taxes and insurance. Provides that a creditor is not liable to the debtor or any other person if the estimate of monthly taxes and insurance provided in the disclosure document differs from the actual taxes and insurance owed at any time during the mortgage. Specifies that a violation of the: (1) home loan practices act; or (2) the provisions of the UCCC concerning mortgage transactions; is a deceptive act subject to action by the attorney general. For a deceptive act involving home loan practices or mortgage transactions, increases: (1) the damages that may be awarded to an aggrieved consumer; and (2) the amount of the civil penalties that may be imposed on a violator. Provides that any civil penalties collected by the attorney general shall be deposited in the home owner protection unit account in the general fund. Prohibits a creditor from recommending or issuing to a prospective borrower: (1) a stated income or no documentation loan; or (2) a home loan if the creditor does not have reasonable grounds to believe the home loan is suitable for the prospective borrower based on a reasonable inquiry into the prospective borrower's creditworthiness. Provides that if a creditor conducts a reasonable inquiry, the creditor is not liable for determining that a home loan is suitable for a borrower, if the borrower later defaults on the home loan issued by the creditor. Requires creditors to offer: (1) a temporary forbearance, subject to terms agreed upon by the creditor and the borrower; (2) a payment plan; or (3) an option for the refinancing, restructuring, or workout of existing indebtedness; whenever a home loan becomes 60 days past due. Requires settlement service providers to make closing documents available to borrowers at least 48 hours before the closing. Increases the statutory damages that may be recovered by a person aggrieved by a violation of the home loan practices act (act) from: (1) two times; to (2) four times; the amount of the finance charges under the contract. Enhances the crime involving a knowing or intentional violation of the act from a Class A misdemeanor to a Class D felony. Increases the civil penalty for the violation of: (1) the act; or (2) an injunction issued to enjoin a violation of the act; from \$10,000 to \$20,000. Requires the real estate appraiser licensure and certification board to require each initial applicant for licensure or certification as a real estate appraiser to submit fingerprints for a national criminal history background check by the FBI. Prohibits the board from releasing the results of a national criminal history background check to a private entity. For a mortgage foreclosure proceeding initiated after June 30, 2008, requires: (1) the clerk of the court to certify to the sheriff a copy of the judgment or decree not later than five business days after the praecipe is filed; and (2) the sheriff to conduct a sale of the property not later than 90 days after receipt of the judgment or decree. Requires various state agencies to form the mortgage lending and fraud prevention task force to coordinate the state's efforts to: (1) regulate the various participants involved in originating, issuing, and closing home loans; (2) enforce state laws and rules concerning mortgage lending practices and mortgage fraud; and (3) prevent fraudulent practices in the home loan industry and investigate and prosecute cases involving mortgage fraud. Requires the Indiana housing and community development authority to provide, not later than November 1, 2008, a report to the legislative council that includes the following: (1) An identification of new and existing funding sources that can be used to assist Indiana homeowners in refinancing their existing mortgage transactions, in order to prevent the foreclosure of the homes secured by the mortgages. (2) A plan for the

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rehabilitation of areas in Indiana that have been adversely or disproportionately affected by mortgage foreclosures. Requires the securities commissioner and the director of the department of financial institutions to cooperate to determine the appropriate state agency or department to regulate a person subject to regulation, licensure, or registration under both the loan broker statute and the UCCC. Repeals provisions that exclude mortgage transactions from the UCCC. Makes conforming changes.

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January 25, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## HOUSE BILL No. 1360

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A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 4-6-12-3.5 IS ADDED TO THE INDIANA CODE  
2       AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE  
3       UPON PASSAGE]: **Sec. 3.5. (a) Not later than July 1, 2008, the unit**  
4       **shall establish a toll free telephone number to receive calls from**  
5       **persons having information about suspected fraudulent:**

6               (1) mortgage lending practices;  
7               (2) real estate appraisals; or  
8               (3) other practices;  
9       **involving residential real estate transactions.**

10       **(b) The toll free telephone number required by this section shall**  
11       **be staffed by:**

12               (1) employees or investigators of the unit who have knowledge  
13               of the laws concerning:  
14                       (A) mortgage lending practices;  
15                       (B) real estate appraisals; or  
16                       (C) other practices;  
17       **involving residential real estate transactions;**

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(2) representatives of any of the entities described in section 4(a)(8) through 4(a)(10) of this chapter who have knowledge of the laws concerning:

(A) mortgage lending practices;

(B) real estate appraisals; or

(C) other practices;

involving residential real estate transactions; or

(3) a combination of persons described in subdivisions (1) and (2).

The attorney general shall designate persons to staff the toll free telephone number as required by this subsection.

(c) The persons designated by the attorney general under subsection (b) to staff the toll free telephone number required by this section shall ensure that any information received from callers to the telephone number is shared with any entity described in section 4 of this chapter that has jurisdiction over the matter reported. The unit shall establish uniform procedures for:

(1) responding to calls received;

(2) protecting:

(A) the anonymity of callers who wish to report information anonymously; or

(B) the identity of callers who request that their identity not be disclosed;

(3) documenting and verifying information reported by callers; and

(4) transmitting reported information to the appropriate entities described in section 4 of this chapter.

(d) The unit shall publicize the availability of the toll free telephone number established under this section in a manner reasonably designed to reach members of the public.

SECTION 2. IC 4-6-12-9, AS AMENDED BY P.L.64-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. (a) The homeowner protection unit account within the general fund is established to support the operations of the unit. The account is administered by the attorney general.

(b) The homeowner protection unit account consists of:

(1) fees collected under IC 24-9-9; and

(2) civil penalties collected under IC 24-5-0.5-4(l)(3).

(c) The expenses of administering the homeowner protection unit account shall be paid from money in the account.

(d) The treasurer of state shall invest the money in the homeowner protection unit account not currently needed to meet the obligations of

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the account in the same manner as other public money may be invested.

(e) Money in the homeowner protection unit account at the end of a state fiscal year does not revert to the state general fund.

SECTION 3. IC 6-1.1-5.5-3, AS AMENDED BY P.L.219-2007, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) For purposes of this section, "party" includes:

(1) a seller of property that is exempt under the seller's ownership; or

(2) a purchaser of property that is exempt under the purchaser's ownership; from property taxes under IC 6-1.1-10.

(b) Before filing a conveyance document with the county auditor under IC 6-1.1-5-4, all the parties to the conveyance must do the following:

(1) Complete and sign a sales disclosure form as prescribed by the department of local government finance under section 5 of this chapter. All the parties may sign one (1) form, or if all the parties do not agree on the information to be included on the completed form, each party may sign and file a separate form.

(2) Before filing a sales disclosure form with the county auditor, submit the sales disclosure form to the county assessor. The county assessor must review the accuracy and completeness of each sales disclosure form submitted immediately upon receipt of the form and, if the form is accurate and complete, stamp the form as eligible for filing with the county auditor and return the form to the appropriate party for filing with the county auditor. If multiple forms are filed in a short period, the county assessor shall process the forms as quickly as possible. For purposes of this subdivision, a sales disclosure form is considered to be accurate and complete if:

(A) the county assessor does not have substantial evidence when the form is reviewed under this subdivision that information in the form is inaccurate; and

(B) the form:

(i) substantially conforms to the sales disclosure form prescribed by the department of local government finance under section 5 of this chapter; and

(ii) is submitted to the county assessor in a format usable to the county assessor.

(3) File the sales disclosure form with the county auditor.

(c) Except as provided in subsection (d), the auditor shall forward

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each sales disclosure form to the county assessor. The county assessor shall retain the forms for five (5) years. The county assessor shall forward the sales disclosure form data to:

(1) the department of local government finance and the legislative services agency in an electronic format specified jointly by the department of local government finance and the legislative services agency; **and**

**(2) the department of insurance, in an electronic format specified by the department of insurance, for inclusion in the data base maintained by the department of insurance under IC 27-7-3-15.5.**

The county assessor shall forward a copy of the sales disclosure forms to the township assessors in the county. The forms may be used by the county assessing officials, the department of local government finance, and the legislative services agency for the purposes established in IC 6-1.1-4-13.6, sales ratio studies, equalization, adoption of rules under IC 6-1.1-31-3 and IC 6-1.1-31-6, and any other authorized purpose.

(d) In a county containing a consolidated city, the auditor shall forward the sales disclosure form to the appropriate township assessor. The township assessor shall forward the sales disclosure form to the department of local government finance and the legislative services agency in an electronic format specified jointly by the department of local government finance and the legislative services agency. The forms may be used by the county assessing officials, the department of local government finance, and the legislative services agency for the purposes established in IC 6-1.1-4-13.6, sales ratio studies, equalization, adoption of rules under IC 6-1.1-31-3 and IC 6-1.1-31-6, and any other authorized purpose.

(e) If a sales disclosure form includes the telephone number or Social Security number of a party, the telephone number or Social Security number is confidential.

(f) County assessing officials and other local officials may not establish procedures or requirements concerning sales disclosure forms that substantially differ from the procedures and requirements of this chapter.

SECTION 4. IC 6-1.1-5.5-5, AS AMENDED BY P.L.154-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The department of local government finance shall prescribe a sales disclosure form for use under this chapter. The form prescribed by the department of local government finance must include at least the following: ~~information.~~

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- 1 (1) The key number of the parcel (as defined in IC 6-1.1-1-8.5).
- 2 (2) Whether the entire parcel is being conveyed.
- 3 (3) The address of the property.
- 4 (4) The date of the execution of the form.
- 5 (5) The date the property was transferred.
- 6 (6) Whether the transfer includes an interest in land or
- 7 improvements, or both.
- 8 (7) Whether the transfer includes personal property.
- 9 (8) An estimate of any personal property included in the transfer.
- 10 (9) The name, address, and telephone number of:
- 11 (A) each transferor and transferee; and
- 12 (B) the person that prepared the form.
- 13 (10) The mailing address to which the property tax bills or other
- 14 official correspondence should be sent.
- 15 (11) The ownership interest transferred.
- 16 (12) The classification of the property (as residential, commercial,
- 17 industrial, agricultural, vacant land, or other).
- 18 (13) The total price actually paid or required to be paid in
- 19 exchange for the conveyance, whether in terms of money,
- 20 property, a service, an agreement, or other consideration, but
- 21 excluding tax payments and payments for legal and other services
- 22 that are incidental to the conveyance.
- 23 (14) The terms of seller provided financing, such as interest rate,
- 24 points, type of loan, amount of loan, and amortization period, and
- 25 whether the borrower is personally liable for repayment of the
- 26 loan.
- 27 (15) Any family or business relationship existing between the
- 28 transferor and the transferee.
- 29 **(16) The form prescribed by the department of local**
- 30 **government finance under IC 6-1.1-12-2 to allow a person to**
- 31 **claim the deduction provided by IC 6-1.1-12-1.**
- 32 **(17) The form prescribed by the department of local**
- 33 **government finance under IC 6-1.1-20.9-3 to allow a person**
- 34 **to claim the credit provided by IC 6-1.1-20.9-2.**
- 35 **(18) The name and mailing address of the transferee.**
- 36 **(19) The name and mailing address of the transferor.**
- 37 **(20) To the extent determinable, the following information**
- 38 **concerning any of the following persons that have**
- 39 **participated in or assisted with the transaction, or that will**
- 40 **participate in or assist with the transaction:**
- 41 **(A) The name and license number (under IC 23-2-5) of**
- 42 **each loan brokerage business involved in the transaction.**

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(B) The name and registration number (under IC 23-2-5) of each originator involved in the transaction.

(C) The name and license number (under IC 25-34.1) of each:

(i) principal broker; and

(ii) salesperson or broker-salesperson, if any; involved in the transaction.

(D) The name and certificate number (under IC 27-7-3) of each title insurance company involved in the transaction.

(E) The name and license number (under IC 27-1-15.6) of each title insurance agent involved in the transaction.

(F) The name and:

(i) license or certificate number (under IC 25-34.1-3-8) of each licensed or certified real estate appraiser; or

(ii) license number (under IC 25-34.1) of each broker; who appraises the property that is the subject of the transaction.

(G) If the transfer of the property involves a mortgage transaction (as defined in IC 24-4.5-8-104):

(i) the name of the mortgagee; and

(ii) if the mortgagee is required to be licensed under IC 24-4.5-3-502, the license number of the mortgagee.

(16) (21) Other information as required by the department of local government finance to carry out this chapter.

If a form under this section includes the telephone number or the Social Security number of a party, the telephone number or the Social Security number is confidential.

(b) The instructions for completing the form described in subsection

(a) must include the information described in ~~IC 6-1.1-12-43(c)(1)~~. **IC 6-1.1-12-43(b)(1).**

SECTION 5. IC 6-1.1-12-2, AS AMENDED BY P.L.183-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) Except as provided in section 17.8 of this chapter **and subject to subsection (d)**, a person who desires to claim the deduction provided by section 1 of this chapter must file a statement in duplicate, on forms prescribed by the department of local government finance, with the auditor of the county in which the real property, mobile home not assessed as real property, or manufactured home not assessed as real property is located. With respect to real property, the statement must be filed during the twelve (12) months before June 11 of each year for which the person wishes to obtain the deduction. With respect to a mobile home that is not assessed as real

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property or a manufactured home that is not assessed as real property, the statement must be filed during the twelve (12) months before March 31 of each year for which the individual wishes to obtain the deduction. The statement may be filed in person or by mail. If mailed, the mailing must be postmarked on or before the last day for filing. In addition to the statement required by this subsection, a contract buyer who desires to claim the deduction must submit a copy of the recorded contract or recorded memorandum of the contract, which must contain a legal description sufficient to meet the requirements of IC 6-1.1-5, with the first statement that the buyer files under this section with respect to a particular parcel of real property. Upon receipt of the statement and the recorded contract or recorded memorandum of the contract, the county auditor shall assign a separate description and identification number to the parcel of real property being sold under the contract.

(b) The statement referred to in subsection (a) must be verified under penalties for perjury, and the statement must contain the following information:

- (1) The balance of the person's mortgage or contract indebtedness on the assessment date of the year for which the deduction is claimed.
- (2) The assessed value of the real property, mobile home, or manufactured home.
- (3) The full name and complete residence address of the person and of the mortgagee or contract seller.
- (4) The name and residence of any assignee or bona fide owner or holder of the mortgage or contract, if known, and if not known, the person shall state that fact.
- (5) The record number and page where the mortgage, contract, or memorandum of the contract is recorded.
- (6) A brief description of the real property, mobile home, or manufactured home which is encumbered by the mortgage or sold under the contract.
- (7) If the person is not the sole legal or equitable owner of the real property, mobile home, or manufactured home, the exact share of the person's interest in it.
- (8) The name of any other county in which the person has applied for a deduction under this section and the amount of deduction claimed in that application.

(c) The authority for signing a deduction application filed under this section may not be delegated by the real property, mobile home, or manufactured home owner or contract buyer to any person except upon

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an executed power of attorney. The power of attorney may be contained in the recorded mortgage, contract, or memorandum of the contract, or in a separate instrument.

**(d) For use in transactions involving a first lien purchase money mortgage for residential property, the department of local government finance shall combine the form prescribed under subsection (a) with the form prescribed by the department under IC 6-1.1-5.5-5. With respect to a single family residential:**

- (1) first lien purchase money mortgage transaction; or**
- (2) refinancing transaction;**

**described in section 43 of this chapter, a closing agent may file the form prescribed by the department under this section with the appropriate county official on behalf of the person who desires to claim the deduction provided by section 1 of this chapter, as provided in section 43 of this chapter.**

SECTION 6. IC 6-1.1-12-43 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 43. (a) For purposes of this section:

- (1) "benefit" refers to:
  - (A) a deduction under section 1, 9, 11, 13, 14, 16, 17.4, 26, 29, 31, 33, or 34 of this chapter; or
  - (B) the homestead credit under IC 6-1.1-20.9-2.
- (2) "closing agent" means a person that closes a transaction;
- (3) "customer" means an individual who obtains a loan in a transaction; and
- (4) "transaction" means a single family residential:
  - (A) first lien purchase money mortgage transaction; or
  - (B) refinancing transaction.

**(b) Before closing a transaction after December 31, 2004, a closing agent must provide to the customer the form referred to in subsection (c).**

**(c) Before June 1, 2004, (b) The department of local government finance shall prescribe the a form to be provided by closing agents to customers under subsection (b). (d)(1). The department shall make the form available to closing agents, county assessors, county auditors, and county treasurers in hard copy and electronic form. County assessors, county auditors, and county treasurers shall make the form available to the general public. The form must:**

- (1) on one (1) side:**
  - (A) list each benefit;**
  - (B) list the eligibility criteria for each benefit; and**
  - (C) indicate that a new application for a deduction under**

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section 1 of this chapter is required when residential real property is refinanced;

(2) on the other side indicate:

(A) each action by; and

(B) each type of documentation from;

the customer required to file for each benefit; and

(3) be printed in one (1) of two (2) or more colors prescribed by the department of local government finance that distinguish the form from other documents typically used in a closing. ~~referred to in subsection (b).~~

~~(d)~~ (c) A closing agent:

(1) may reproduce the form referred to in subsection ~~(c)~~; (b);

(2) in reproducing the form, must use a print color prescribed by the department of local government finance; and

(3) is not responsible for the content of the form referred to in subsection ~~(c)~~ (b) and shall be held harmless by the department of local government finance from any liability for the content of the form.

**(d) A closing agent must do the following with respect to a transaction that is closed after June 30, 2008:**

**(1) Provide to the customer the form prescribed by the department under subsection (b) not later than forty-eight (48) hours before the closing of the transaction, in accordance with IC 24-9-4.5.**

**(2) At the time of closing:**

**(A) provide the customer with:**

**(i) the sales disclosure form prescribed by the department under IC 6-1.1-5.5-5, if the transaction involves a first lien purchase money mortgage transaction; or**

**(ii) the form prescribed by the department under section 2(a) of this chapter to allow a person to claim the deduction provided by section 1 of this chapter, if the transaction is a refinancing transaction;**

**(B) subject to subsection (f), require the customer to complete and sign the form provided under clause (A); and**

**(C) subject to subsection (f), collect the form signed and completed under clause (B) for filing under subsection (e).**

**(3) At the time of the closing:**

**(A) inform the customer of the deductions available under sections 9, 11, 13, 14, 16, 17.4, 26, 29, 31, 33, and 34 of this chapter, as described in the form prescribed by the**

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department under subsection (b);

(B) offer to provide the customer with any forms prescribed by the department to allow a person to claim the deductions described in clause (A); and

(C) provide to the customer any forms requested by the customer under clause (B).

(e) This subsection applies to a transaction that is closed after June 30, 2008. The closing agent shall file a form completed and signed by the customer under subsection (d)(2)(B) as follows:

(1) In the case of a first lien purchase money mortgage transaction, the closing agent shall file the signed sales disclosure form with the appropriate county assessor and county auditor in accordance with IC 6-1.1-5.5-3.

(2) In the case of a refinancing transaction, the closing agent shall file the signed mortgage deduction form in accordance with section 2(a) of this chapter.

~~(e)~~ (f) A closing agent to which this section applies shall document its the closing agent's compliance with this section with respect to each transaction in the form of verification of compliance signed by the customer. At the time of the closing, a customer may refuse to:

(1) complete and sign the form provided to the customer under subsection (d)(2)(A); or

(2) return the form to the closing agent for filing under subsection (e).

If the customer refuses to complete, sign, or return the form, as described in subsection (d)(2), the customer shall sign a statement indicating the customer's refusal.

~~(f)~~ (g) A closing agent is subject to a civil penalty of twenty-five dollars (\$25) for each instance in which the closing agent fails to comply with this section with respect to a customer. The penalty:

(1) may be enforced by the state agency that has administrative jurisdiction over the closing agent in the same manner that the agency enforces the payment of fees or other penalties payable to the agency; and

(2) shall be paid into the property tax replacement fund.

(h) A closing agent is not liable for any other damages claimed by a customer because of:

(1) the closing agent's mere failure to provide ~~the~~ an appropriate document to the customer under this section; or

(2) any determination made with respect to a customer's eligibility for a benefit.

~~(g)~~ (i) The state agency that has administrative jurisdiction over a

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1 closing agent shall:

2 (1) examine the closing agent to determine compliance with this  
3 section; and

4 (2) impose and collect penalties under subsection ~~(f)~~: **(g)**.

5 SECTION 7. IC 6-1.1-20.9-3, AS AMENDED BY P.L.183-2007,  
6 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
7 UPON PASSAGE]: Sec. 3. (a) **Subject to subsection (e)**, an individual  
8 who desires to claim the credit provided by section 2 of this chapter  
9 must file a certified statement in duplicate, on forms prescribed by the  
10 department of local government finance, with the auditor of the county  
11 in which the homestead is located. The statement shall include the  
12 parcel number or key number of the real estate and the name of the  
13 city, town, or township in which the real estate is located. With respect  
14 to real property, the statement must be filed during the twelve (12)  
15 months before June 11 of the year prior to the first year for which the  
16 person wishes to obtain the credit for the homestead. With respect to  
17 a mobile home that is not assessed as real property or a manufactured  
18 home that is not assessed as real property, the statement must be filed  
19 during the twelve (12) months before March 31 of the first year for  
20 which the individual wishes to obtain the credit. The statement may be  
21 filed in person or by mail. If mailed, the mailing must be postmarked  
22 on or before the last day for filing. The statement applies for that first  
23 year and any succeeding year for which the credit is allowed.

24 (b) The certified statement referred to in subsection (a) shall contain  
25 the name of any other county and township in which the individual  
26 owns or is buying real property.

27 (c) If an individual who is receiving the credit provided by this  
28 chapter changes the use of the individual's real property, so that part or  
29 all of that real property no longer qualifies for the homestead credit  
30 provided by this chapter, the individual must file a certified statement  
31 with the auditor of the county, notifying the auditor of the change of  
32 use within sixty (60) days after the date of that change. An individual  
33 who changes the use of the individual's real property and fails to file  
34 the statement required by this subsection is liable for the amount of the  
35 credit the individual was allowed under this chapter for that real  
36 property.

37 (d) An individual who receives the credit provided by section 2 of  
38 this chapter for property that is jointly held with another owner in a  
39 particular year and remains eligible for the credit in the following year  
40 is not required to file a statement to reapply for the credit following the  
41 removal of the joint owner if:

42 (1) the individual is the sole owner of the property following the

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1 death of the individual's spouse;

2 (2) the individual is the sole owner of the property following the  
3 death of a joint owner who was not the individual's spouse; or

4 (3) the individual is awarded sole ownership of property in a  
5 divorce decree.

6 **(e) For use in transactions involving a conveyance (as defined in**  
7 **IC 6-1.1-5.5-1), the department of local government finance shall**  
8 **combine the form prescribed under subsection (a) with the form**  
9 **prescribed by the department under IC 6-1.1-5.5-5. With respect**  
10 **to a transaction described in IC 6-1.1-12-43(a)(4), a closing agent**  
11 **may file the form prescribed by the department under this section**  
12 **with the appropriate county official on behalf of the person who**  
13 **desires to claim the credit provided by section 2 of this chapter, as**  
14 **provided in IC 6-1.1-12-43.**

15 SECTION 8. IC 6-3-1-3.5, AS AMENDED BY P.L.144-2007,  
16 SECTION 3, AS AMENDED BY P.L.211-2007, SECTION 19, AND  
17 AS AMENDED BY P.L.223-2007, SECTION 1, IS CORRECTED  
18 AND AMENDED TO READ AS FOLLOWS [EFFECTIVE  
19 JANUARY 1, 2009]: Sec. 3.5. When used in this article, the term  
20 "adjusted gross income" shall mean the following:

21 (a) In the case of all individuals, "adjusted gross income" (as  
22 defined in Section 62 of the Internal Revenue Code), modified as  
23 follows:

24 (1) Subtract income that is exempt from taxation under this article  
25 by the Constitution and statutes of the United States.

26 (2) Add an amount equal to any deduction or deductions allowed  
27 or allowable pursuant to Section 62 of the Internal Revenue Code  
28 for taxes based on or measured by income and levied at the state  
29 level by any state of the United States.

30 (3) Subtract one thousand dollars (\$1,000), or in the case of a  
31 joint return filed by a husband and wife, subtract for each spouse  
32 one thousand dollars (\$1,000).

33 (4) Subtract one thousand dollars (\$1,000) for:

34 (A) each of the exemptions provided by Section 151(c) of the  
35 Internal Revenue Code;

36 (B) each additional amount allowable under Section 63(f) of  
37 the Internal Revenue Code; and

38 (C) the spouse of the taxpayer if a separate return is made by  
39 the taxpayer and if the spouse, for the calendar year in which  
40 the taxable year of the taxpayer begins, has no gross income  
41 and is not the dependent of another taxpayer.

42 (5) Subtract:

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- 1 (A) for taxable years beginning after December 31, 2004, one  
 2 thousand five hundred dollars (\$1,500) for each of the  
 3 exemptions allowed under Section 151(c)(1)(B) of the Internal  
 4 Revenue Code (as effective January 1, 2004); and  
 5 (B) five hundred dollars (\$500) for each additional amount  
 6 allowable under Section 63(f)(1) of the Internal Revenue Code  
 7 if the adjusted gross income of the taxpayer, or the taxpayer  
 8 and the taxpayer's spouse in the case of a joint return, is less  
 9 than forty thousand dollars (\$40,000).  
 10 This amount is in addition to the amount subtracted under  
 11 subdivision (4).  
 12 (6) Subtract an amount equal to the lesser of:  
 13 (A) that part of the individual's adjusted gross income (as  
 14 defined in Section 62 of the Internal Revenue Code) for that  
 15 taxable year that is subject to a tax that is imposed by a  
 16 political subdivision of another state and that is imposed on or  
 17 measured by income; or  
 18 (B) two thousand dollars (\$2,000).  
 19 (7) Add an amount equal to the total capital gain portion of a  
 20 lump sum distribution (as defined in Section 402(e)(4)(D) of the  
 21 Internal Revenue Code) if the lump sum distribution is received  
 22 by the individual during the taxable year and if the capital gain  
 23 portion of the distribution is taxed in the manner provided in  
 24 Section 402 of the Internal Revenue Code.  
 25 (8) Subtract any amounts included in federal adjusted gross  
 26 income under Section 111 of the Internal Revenue Code as a  
 27 recovery of items previously deducted as an itemized deduction  
 28 from adjusted gross income.  
 29 (9) Subtract any amounts included in federal adjusted gross  
 30 income under the Internal Revenue Code which amounts were  
 31 received by the individual as supplemental railroad retirement  
 32 annuities under 45 U.S.C. 231 and which are not deductible under  
 33 subdivision (1).  
 34 (10) Add an amount equal to the deduction allowed under Section  
 35 221 of the Internal Revenue Code for married couples filing joint  
 36 returns if the taxable year began before January 1, 1987.  
 37 (11) Add an amount equal to the interest excluded from federal  
 38 gross income by the individual for the taxable year under Section  
 39 128 of the Internal Revenue Code if the taxable year began before  
 40 January 1, 1985.  
 41 (12) Subtract an amount equal to the amount of federal Social  
 42 Security and Railroad Retirement benefits included in a taxpayer's

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federal gross income by Section 86 of the Internal Revenue Code.

(13) In the case of a nonresident taxpayer or a resident taxpayer residing in Indiana for a period of less than the taxpayer's entire taxable year, the total amount of the deductions allowed pursuant to subdivisions (3), (4), (5), and (6) shall be reduced to an amount which bears the same ratio to the total as the taxpayer's income taxable in Indiana bears to the taxpayer's total income.

(14) In the case of an individual who is a recipient of assistance under IC 12-10-6-1, IC 12-10-6-2.1, IC 12-15-2-2, or IC 12-15-7, subtract an amount equal to that portion of the individual's adjusted gross income with respect to which the individual is not allowed under federal law to retain an amount to pay state and local income taxes.

(15) In the case of an eligible individual, subtract the amount of a Holocaust victim's settlement payment included in the individual's federal adjusted gross income.

(16) For taxable years beginning after December 31, 1999, subtract an amount equal to the portion of any premiums paid during the taxable year by the taxpayer for a qualified long term care policy (as defined in IC 12-15-39.6-5) for the taxpayer or the taxpayer's spouse, or both.

(17) Subtract an amount equal to the lesser of:

(A) for a taxable year:

(i) including any part of 2004, the amount determined under subsection (f); and

(ii) beginning after December 31, 2004, two thousand five hundred dollars (\$2,500); or

(B) the amount of property taxes that are paid during the taxable year in Indiana by the individual on the individual's principal place of residence.

(18) Subtract an amount equal to the amount of a September 11 terrorist attack settlement payment included in the individual's federal adjusted gross income.

(19) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(20) Add an amount equal to any deduction allowed under

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Section 172 of the Internal Revenue Code.

(21) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding twenty-five thousand dollars (\$25,000).

(22) Add an amount equal to the amount that a taxpayer claimed as a deduction for domestic production activities for the taxable year under Section 199 of the Internal Revenue Code for federal income tax purposes.

*(23) Subtract an amount equal to the amount of the taxpayer's qualified military income that was not excluded from the taxpayer's gross income for federal income tax purposes under Section 112 of the Internal Revenue Code.*

~~(23)~~ (24) Subtract income that is:

(A) exempt from taxation under IC 6-3-2-21.7; and

(B) included in the individual's federal adjusted gross income under the Internal Revenue Code.

**(25) For taxable years beginning after December 31, 2008, subtract an amount equal to the amount of any debt forgiven by a creditor in a mortgage transaction (as defined in IC 24-4.5-8-104) with respect to mortgaged property of the taxpayer that is sold during the taxable year:**

**(A) in a foreclosure proceeding; or**

**(B) for an amount less than the amount of the outstanding mortgage obligation;**

**to the extent that the debt forgiven is included in the taxpayer's federal adjustable gross income.**

(b) In the case of corporations, the same as "taxable income" (as defined in Section 63 of the Internal Revenue Code) adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 170 of the Internal Revenue Code.

(3) Add an amount equal to any deduction or deductions allowed

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or allowable pursuant to Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States.

(4) Subtract an amount equal to the amount included in the corporation's taxable income under Section 78 of the Internal Revenue Code.

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(6) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code.

(7) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding twenty-five thousand dollars (\$25,000).

(8) Add an amount equal to the amount that a taxpayer claimed as a deduction for domestic production activities for the taxable year under Section 199 of the Internal Revenue Code for federal income tax purposes.

(9) Add to the extent required by IC 6-3-2-20 the amount of intangible expenses (as defined in IC 6-3-2-20) and any directly related intangible interest expenses (as defined in IC 6-3-2-20) for the taxable year that reduced the corporation's taxable income (as defined in Section 63 of the Internal Revenue Code) for federal income tax purposes.

*(10) Add an amount equal to any deduction for dividends paid (as defined in Section 561 of the Internal Revenue Code) to shareholders of a captive real estate investment trust (as defined in section 34.5 of this chapter).*

~~(10)~~ **(11)** Subtract income that is:

(A) exempt from taxation under IC 6-3-2-21.7; and

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*(B) included in the corporation's taxable income under the Internal Revenue Code.*

(c) In the case of life insurance companies (as defined in Section 816(a) of the Internal Revenue Code) that are organized under Indiana law, the same as "life insurance company taxable income" (as defined in Section 801 of the Internal Revenue Code), adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction allowed or allowable under Section 170 of the Internal Revenue Code.

(3) Add an amount equal to a deduction allowed or allowable under Section 805 or Section 831(c) of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state.

(4) Subtract an amount equal to the amount included in the company's taxable income under Section 78 of the Internal Revenue Code.

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(6) Add an amount equal to any deduction allowed under Section 172 or Section 810 of the Internal Revenue Code.

(7) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding twenty-five thousand dollars (\$25,000).

(8) Add an amount equal to the amount that a taxpayer claimed as a deduction for domestic production activities for the taxable year under Section 199 of the Internal Revenue Code for federal income tax purposes.

*(9) Subtract income that is:*

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1 (A) exempt from taxation under IC 6-3-2-21.7; and

2 (B) included in the insurance company's taxable income under  
3 the Internal Revenue Code.

4 (d) In the case of insurance companies subject to tax under Section  
5 831 of the Internal Revenue Code and organized under Indiana law, the  
6 same as "taxable income" (as defined in Section 832 of the Internal  
7 Revenue Code), adjusted as follows:

8 (1) Subtract income that is exempt from taxation under this article  
9 by the Constitution and statutes of the United States.

10 (2) Add an amount equal to any deduction allowed or allowable  
11 under Section 170 of the Internal Revenue Code.

12 (3) Add an amount equal to a deduction allowed or allowable  
13 under Section 805 or Section 831(c) of the Internal Revenue Code  
14 for taxes based on or measured by income and levied at the state  
15 level by any state.

16 (4) Subtract an amount equal to the amount included in the  
17 company's taxable income under Section 78 of the Internal  
18 Revenue Code.

19 (5) Add or subtract the amount necessary to make the adjusted  
20 gross income of any taxpayer that owns property for which bonus  
21 depreciation was allowed in the current taxable year or in an  
22 earlier taxable year equal to the amount of adjusted gross income  
23 that would have been computed had an election not been made  
24 under Section 168(k) of the Internal Revenue Code to apply bonus  
25 depreciation to the property in the year that it was placed in  
26 service.

27 (6) Add an amount equal to any deduction allowed under Section  
28 172 of the Internal Revenue Code.

29 (7) Add or subtract the amount necessary to make the adjusted  
30 gross income of any taxpayer that placed Section 179 property (as  
31 defined in Section 179 of the Internal Revenue Code) in service  
32 in the current taxable year or in an earlier taxable year equal to  
33 the amount of adjusted gross income that would have been  
34 computed had an election for federal income tax purposes not  
35 been made for the year in which the property was placed in  
36 service to take deductions under Section 179 of the Internal  
37 Revenue Code in a total amount exceeding twenty-five thousand  
38 dollars (\$25,000).

39 (8) Add an amount equal to the amount that a taxpayer claimed as  
40 a deduction for domestic production activities for the taxable year  
41 under Section 199 of the Internal Revenue Code for federal  
42 income tax purposes.

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1           (9) *Subtract income that is:*

2                 (A) *exempt from taxation under IC 6-3-2-21.7; and*

3                 (B) *included in the insurance company's taxable income under*  
4                 *the Internal Revenue Code.*

5           (e) In the case of trusts and estates, "taxable income" (as defined for  
6 trusts and estates in Section 641(b) of the Internal Revenue Code)  
7 adjusted as follows:

8                 (1) Subtract income that is exempt from taxation under this article  
9                 by the Constitution and statutes of the United States.

10                (2) Subtract an amount equal to the amount of a September 11  
11 terrorist attack settlement payment included in the federal  
12 adjusted gross income of the estate of a victim of the September  
13 11 terrorist attack or a trust to the extent the trust benefits a victim  
14 of the September 11 terrorist attack.

15                (3) Add or subtract the amount necessary to make the adjusted  
16 gross income of any taxpayer that owns property for which bonus  
17 depreciation was allowed in the current taxable year or in an  
18 earlier taxable year equal to the amount of adjusted gross income  
19 that would have been computed had an election not been made  
20 under Section 168(k) of the Internal Revenue Code to apply bonus  
21 depreciation to the property in the year that it was placed in  
22 service.

23                (4) Add an amount equal to any deduction allowed under Section  
24 172 of the Internal Revenue Code.

25                (5) Add or subtract the amount necessary to make the adjusted  
26 gross income of any taxpayer that placed Section 179 property (as  
27 defined in Section 179 of the Internal Revenue Code) in service  
28 in the current taxable year or in an earlier taxable year equal to  
29 the amount of adjusted gross income that would have been  
30 computed had an election for federal income tax purposes not  
31 been made for the year in which the property was placed in  
32 service to take deductions under Section 179 of the Internal  
33 Revenue Code in a total amount exceeding twenty-five thousand  
34 dollars (\$25,000).

35                (6) Add an amount equal to the amount that a taxpayer claimed as  
36 a deduction for domestic production activities for the taxable year  
37 under Section 199 of the Internal Revenue Code for federal  
38 income tax purposes.

39           (7) *Subtract income that is:*

40                 (A) *exempt from taxation under IC 6-3-2-21.7; and*

41                 (B) *included in the taxpayer's taxable income under the*  
42                 *Internal Revenue Code.*

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(f) This subsection applies only to the extent that an individual paid property taxes in 2004 that were imposed for the March 1, 2002, assessment date or the January 15, 2003, assessment date. The maximum amount of the deduction under subsection (a)(17) is equal to the amount determined under STEP FIVE of the following formula:

STEP ONE: Determine the amount of property taxes that the taxpayer paid after December 31, 2003, in the taxable year for property taxes imposed for the March 1, 2002, assessment date and the January 15, 2003, assessment date.

STEP TWO: Determine the amount of property taxes that the taxpayer paid in the taxable year for the March 1, 2003, assessment date and the January 15, 2004, assessment date.

STEP THREE: Determine the result of the STEP ONE amount divided by the STEP TWO amount.

STEP FOUR: Multiply the STEP THREE amount by two thousand five hundred dollars (\$2,500).

STEP FIVE: Determine the sum of the STEP FOUR amount and two thousand five hundred dollars (\$2,500).

SECTION 9. IC 6-3.1-32 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]:

**Chapter 32. Home Loan Cost Tax Credit**

**Sec. 1. This chapter applies only to taxable years beginning after December 31, 2008.**

**Sec. 2. As used in this chapter, "approved home ownership education efforts" refers to the following:**

**(1) Educational materials that are:**

**(A) prepared by or at the expense of a taxpayer;**

**(B) designed to inform borrowers or prospective borrowers about:**

**(i) the features of, and risks associated with, the home loan products offered by the taxpayer; or**

**(ii) the responsibilities and costs associated with home ownership in general; and**

**(C) approved by the authority for distribution to Indiana consumers.**

**(2) Home ownership counseling services that are:**

**(A) conducted by or at the expense of a taxpayer;**

**(B) designed to assist borrowers or prospective borrowers in meeting their obligations under a home loan; and**

**(C) approved by the authority to be offered to Indiana consumers.**

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1        **Sec. 3.** As used in this chapter, "authority" refers to the Indiana  
 2        housing and community development authority established by  
 3        IC 5-20-1-3.

4        **Sec. 4.** As used in this chapter, "borrower" has the meaning set  
 5        forth in IC 24-9-2-4.

6        **Sec. 5.** As used in this chapter, "home loan" means a loan that  
 7        is secured by a mortgage or deed of trust on real estate in Indiana  
 8        on which there is located or will be located at least one (1)  
 9        structure that:

10        (1) is designed primarily for occupancy of one (1) to four (4)  
 11        families; and

12        (2) is or will be occupied by a borrower as the borrower's  
 13        principal dwelling.

14        **Sec. 6.** As used in this chapter, "pass through entity" means:

15        (1) a corporation that is exempt from the adjusted gross  
 16        income tax under IC 6-3-2-2.8(2);

17        (2) a partnership;

18        (3) a limited liability company; or

19        (4) a limited liability partnership.

20        **Sec. 7.** As used in this chapter, "qualified home loan cost"  
 21        means any of the following incurred by a taxpayer:

22        (1) Costs incurred for approved home ownership education  
 23        efforts.

24        (2) The cost of any contribution or grant made to the  
 25        authority for the mortgage foreclosure counseling and  
 26        education program under IC 5-20-6-3.

27        **Sec. 8.** As used in this chapter, "state tax liability" means a  
 28        taxpayer's total tax liability that is incurred under:

29        (1) IC 6-5.5 (financial institutions tax), if the taxpayer is  
 30        subject to the financial institutions tax; or

31        (2) IC 6-3-1 through IC 6-3-7 (adjusted gross income tax), if  
 32        the taxpayer is not subject to the financial institutions tax  
 33        under IC 6-5.5;

34        as computed after the application of the credits that under  
 35        IC 6-3.1-1-2 are to be applied before the credit provided by this  
 36        chapter.

37        **Sec. 9.** As used in this chapter, "taxpayer" means a creditor (as  
 38        defined in IC 24-9-2-6) that:

39        (1) has any state tax liability; and

40        (2) issues or brokers at least twenty-five (25) home loans  
 41        during the taxable year for which the taxpayer seeks the  
 42        credit provided by section 10 of this chapter.

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1       **Sec. 10.** A taxpayer that incurs qualified home loan costs during  
 2 a taxable year is entitled to a credit against the taxpayer's state tax  
 3 liability. The amount of the credit is equal to the lesser of:

- 4           (1) the amount of the taxpayer's qualified home loan costs  
 5 during the taxable year; or  
 6           (2) the amount of the taxpayer's state tax liability for the  
 7 taxable year.

8       **Sec. 11.** (a) To be entitled to a credit for a qualified home loan  
 9 cost described in section 7(1) of this chapter, a taxpayer must  
 10 request the authority to approve the home ownership education  
 11 efforts for which the taxpayer seeks a credit under this chapter.  
 12 The request must be made before costs for the home ownership  
 13 education efforts are incurred by the taxpayer.

14       (b) If the authority determines that the home ownership  
 15 education efforts for which the taxpayer seeks a credit under this  
 16 chapter meet the rules adopted by the authority under section 15  
 17 of this chapter, the authority shall certify to the taxpayer that the  
 18 taxpayer's home ownership education efforts are approved by the  
 19 authority.

20       **Sec. 12.** (a) If the amount determined under section 10 of this  
 21 chapter for a taxpayer in a taxable year exceeds the taxpayer's  
 22 state tax liability for that taxable year, the taxpayer may carry the  
 23 excess over to the following taxable years. The amount of the credit  
 24 carryover from a taxable year shall be reduced to the extent that  
 25 the carryover is used by the taxpayer to obtain a credit under this  
 26 chapter for any subsequent taxable year. A taxpayer is not entitled  
 27 to a carryback.

28       (b) A taxpayer is not entitled to a refund of any unused credit.

29       **Sec. 13.** If a pass through entity does not have state income tax  
 30 liability against which the tax credit allowed under this chapter  
 31 may be applied, a shareholder or partner of the pass through entity  
 32 is entitled to a tax credit equal to:

- 33           (1) the tax credit determined for the pass through entity for  
 34 the taxable year; multiplied by  
 35           (2) the percentage of the pass through entity's distributive  
 36 income to which the shareholder or partner is entitled.

37       **Sec. 14.** To receive the credit provided by this chapter, a  
 38 taxpayer must claim the credit on the taxpayer's state tax return  
 39 or returns in the manner prescribed by the department. The  
 40 taxpayer must submit to the department all information that the  
 41 department determines is necessary to calculate the credit  
 42 provided by this chapter and to determine the taxpayer's eligibility

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1 **for the credit, including any certification received by the taxpayer**  
 2 **from the authority under section 11(b) of this chapter.**

3 **Sec. 15. The authority shall adopt rules under IC 4-22-2 to**  
 4 **certify home ownership education efforts under this chapter.**

5 SECTION 10. IC 23-2-5-3, AS AMENDED BY P.L.230-2007,  
 6 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 7 JULY 1, 2008]: Sec. 3. (a) As used in this chapter, "certificate of  
 8 registration" means a certificate issued by the commissioner  
 9 authorizing an individual to:

10 (1) engage in origination activities on behalf of a licensee; or

11 (2) **act as a principal manager on behalf of a licensee.**

12 (b) As used in this chapter, "creditor" means a person:

13 (1) that loans funds of the person in connection with a loan; and

14 (2) to whom the loan is initially payable on the face of the note or  
 15 contract evidencing the loan.

16 (c) As used in this chapter, "license" means a license issued by the  
 17 commissioner authorizing a person to engage in the loan brokerage  
 18 business.

19 (d) As used in this chapter, "licensee" means a person that is issued  
 20 a license under this chapter.

21 (e) As used in this chapter, "loan broker" means any person who, in  
 22 return for any consideration from any source procures, attempts to  
 23 procure, or assists in procuring, a loan from a third party or any other  
 24 person, whether or not the person seeking the loan actually obtains the  
 25 loan. "Loan broker" does not include:

26 (1) any supervised financial organization (as defined in  
 27 IC 24-4.5-1-301(20)), including a bank, savings bank, trust  
 28 company, savings association, or credit union;

29 (2) any other financial institution that is:

30 (A) regulated by any agency of the United States or any state;  
 31 and

32 (B) regularly actively engaged in the business of making  
 33 consumer loans that are not secured by real estate or taking  
 34 assignment of consumer sales contracts that are not secured by  
 35 real estate;

36 (3) any insurance company; or

37 (4) any person arranging financing for the sale of the person's  
 38 product.

39 (f) As used in this chapter, "loan brokerage business" means a  
 40 person acting as a loan broker.

41 (g) As used in this chapter, "origination activities" means  
 42 communication with or assistance of a borrower or prospective

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borrower in the selection of loan products or terms.

(h) As used in this chapter, "originator" means a person engaged in origination activities. The term "originator" does not include a person who performs origination activities for any entity that is not a loan broker under subsection (e).

(i) As used in this chapter, "person" means an individual, a partnership, a trust, a corporation, a limited liability company, a limited liability partnership, a sole proprietorship, a joint venture, a joint stock company, or another group or entity, however organized.

(j) As used in this chapter, "registrant" means an individual who is registered:

- (1) to engage in origination activities under this chapter; or
- (2) as a principal manager.

(k) As used in this chapter, "ultimate equitable owner" means a person who, directly or indirectly, owns or controls ten percent (10%) or more of the equity interest in a loan broker licensed or required to be licensed under this chapter, regardless of whether the person owns or controls the equity interest through one (1) or more other persons or one (1) or more proxies, powers of attorney, or variances.

(l) As used in this chapter, "principal manager" means an individual who:

- (1) has at least three (3) years of experience:
  - (A) as a loan broker; or
  - (B) in financial services;
 that is acceptable to the commissioner; and
- (2) is principally responsible for the supervision and management of the employees and business affairs of a licensee.

**(m) As used in this chapter, "personal information" includes any of the following:**

- (1) An individual's first and last names or first initial and last name.**
- (2) Any of the following data elements:**
  - (A) A Social Security number.**
  - (B) A driver's license number.**
  - (C) A state identification card number.**
  - (D) A credit card number.**
  - (E) A financial account number or debit card number in combination with a security code, password, or access code that would permit access to the person's account.**
- (3) With respect to an individual, any of the following:**
  - (A) Address.**
  - (B) Telephone number.**

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(C) Information concerning the individual's:

- (i) income or other compensation;
- (ii) credit history;
- (iii) credit score;
- (iv) assets;
- (v) liabilities; or
- (vi) employment history.

(n) As used in this chapter, personal information is "encrypted" if the personal information:

- (1) has been transformed through the use of an algorithmic process into a form in which there is a low probability of assigning meaning without use of a confidential process or key; or
- (2) is secured by another method that renders the personal information unreadable or unusable.

(o) As used in this chapter, personal information is "redacted" if the personal information has been altered or truncated so that not more than the last four (4) digits of:

- (1) a Social Security number;
- (2) a driver's license number;
- (3) a state identification number; or
- (4) an account number;

are accessible as part of the personal information.

SECTION 11. IC 23-2-5-4, AS AMENDED BY P.L.230-2007, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) **A person may not engage in the loan brokerage business in Indiana unless the person first obtains a license from the commissioner.** Any person desiring to engage or continue in the loan brokerage business shall apply to the commissioner for a license under this chapter.

(b) **An individual may not perform origination activities in Indiana on behalf of a person licensed or required to be licensed under this chapter unless the individual first obtains a certificate of registration from the commissioner.** An individual desiring to be employed by a licensee to engage in origination activities **on behalf of a person licensed or required to be licensed under this chapter** shall apply to the commissioner for registration under this chapter.

(c) **An individual may not act as a principal manager on behalf of a person licensed or required to be licensed under this chapter unless the individual first obtains a certificate of registration from the commissioner.** Any individual desiring to be employed by a licensee **act as a principal manager on behalf of a person licensed or**

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1 required to be licensed under this chapter shall apply to the  
2 commissioner for registration under this chapter.

3 **(d) The commissioner may request evidence of compliance with**  
4 **this section at any of the following times:**

5 **(1) The time of application for an initial:**

6 **(A) license; or**

7 **(B) certificate of registration.**

8 **(2) The time of renewal of a license or certificate of**  
9 **registration. However, if the commissioner seeks evidence of**  
10 **compliance through a criminal background check described**  
11 **in subsection (e), the commissioner must consider:**

12 **(A) the resources and staffing available to the state police**  
13 **department to process or conduct a criminal background**  
14 **check in a timely manner;**

15 **(B) the length of time that has elapsed since the most**  
16 **recent criminal background check was conducted with**  
17 **respect to the applicant for renewal; and**

18 **(C) the financial or administrative burdens that a criminal**  
19 **background check will place on the applicant for renewal.**

20 **(3) Any other time considered necessary by the commissioner.**

21 **(e) For purposes of subsection (d), evidence of compliance with**  
22 **this section may include a criminal background check, including a**  
23 **national criminal history background check (as defined in**  
24 **IC 10-13-3-12) by the Federal Bureau of Investigation.**

25 SECTION 12. IC 23-2-5-5, AS AMENDED BY P.L.230-2007,  
26 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
27 JULY 1, 2008]: Sec. 5. (a) An application for license or renewal of a  
28 license must contain:

29 (1) consent to service of process under subsection (h);

30 (2) evidence of the bond required in subsection (e);

31 (3) an application fee of four hundred dollars (\$400), plus two  
32 hundred dollars (\$200) for each ultimate equitable owner;

33 (4) an affidavit affirming that none of the applicant's ultimate  
34 equitable owners, directors, managers, or officers have been  
35 convicted, in any jurisdiction, of an offense involving fraud or  
36 deception that is punishable by at least one (1) year of  
37 imprisonment, unless waived by the commissioner under  
38 subsection (f); (i);

39 (5) evidence that the applicant, if the applicant is an individual,  
40 has completed the education requirements under section 21 of this  
41 chapter;

42 (6) the name and registration number for each originator to be

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employed by the licensee;

(7) the name and registration number for each principal manager;  
and

(8) for each ultimate equitable owner, the following information:

(1) The name of the ultimate equitable owner.

(2) The address of the ultimate equitable owner, including the home address of the ultimate equitable owner if the ultimate equitable owner is an individual.

(3) The telephone number of the ultimate equitable owner, including the home telephone number if the ultimate equitable owner is an individual.

(4) The ultimate equitable owner's Social Security number and date of birth, if the ultimate equitable owner is an individual.

(b) An application for registration as an originator shall be made on a registration form prescribed by the commissioner. The application must include the following information for the individual that seeks to be registered as an originator:

(1) The name of the individual.

(2) The home address of the individual.

(3) The home telephone number of the individual.

(4) The individual's Social Security number and date of birth.

(5) The name of the:

(A) licensee; or

(B) applicant for licensure;

for whom the individual seeks to be employed as an originator.

(6) Consent to service of process under subsection (h).

(7) Evidence that the individual has completed the education requirements described in section 21 of this chapter.

(8) An application fee of one hundred dollars (\$100).

(9) All registration numbers previously issued to the individual under this chapter, if applicable.

(c) An application for registration as a principal manager shall be made on a registration form prescribed by the commissioner. The application must include the following information for the individual who seeks to be registered as a principal manager:

(1) The name of the individual.

(2) The home address of the individual.

(3) The home telephone number of the individual.

(4) The individual's Social Security number and date of birth.

(5) The name of the:

(A) licensee; or

(B) applicant for licensure;

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for whom the individual seeks to be employed as a principal manager.

(6) Consent to service of process under subsection (h).

(7) Evidence that the individual has completed the education requirements described in section 21 of this chapter.

(8) Evidence that the individual has at least three (3) years of experience in the:

(A) loan brokerage; or

(B) financial services; business.

(9) An application fee of two hundred dollars (\$200).

(10) All registration numbers previously issued to the individual, if applicable.

(d) The commissioner shall require an applicant for registration as:

(1) an originator under subsection (b); or

(2) a principal manager under subsection (c);

to pass a written examination prepared and administered by the commissioner or an agent appointed by the commissioner.

(e) A licensee must maintain a bond satisfactory to the commissioner in the amount of ~~fifty~~ **one hundred** thousand dollars (~~\$50,000~~), (**\$100,000**), which shall be in favor of the state and shall secure payment of damages to any person aggrieved by any violation of this chapter by the licensee.

(f) The commissioner shall issue a license and license number to an applicant that meets the licensure requirements of this chapter. Whenever the registration provisions of this chapter have been complied with, the commissioner shall issue a certificate of registration and registration number authorizing the registrant to:

(1) engage in origination activities; or

(2) act as a principal manager;

whichever applies.

(g) Licenses and initial certificates of registration issued by the commissioner are valid until January 1 of the second year after issuance.

(h) Every applicant for licensure or registration or for renewal of a license or a registration shall file with the commissioner, in such form as the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant arising from the violation of any provision of this chapter. Service shall be made in accordance with the Indiana Rules of Trial Procedure.

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(i) Upon good cause shown, the commissioner may waive the requirements of subsection (a)(4) for one (1) or more of an applicant's ultimate equitable owners, directors, managers, or officers.

(j) Whenever an initial or a renewal application for a license or registration is denied or withdrawn, the commissioner shall retain the initial or renewal application fee paid.

(k) The commissioner shall require each:

(1) equitable owner; ~~and~~

**(2) individual described in subsection (a)(4); and**

~~(2) (3)~~ **(3) applicant for registration as:**

(A) an originator; or

(B) a principal manager;

to ~~undergo~~ **submit fingerprints for a national criminal history background check at the expense of the (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for use by the commissioner in determining whether the equitable owner, the individual described in subsection (a)(4), or the applicant should be denied licensure or registration under this chapter for any reason set forth in section 10(c) of this chapter. The equitable owner, individual described in subsection (a)(4), or applicant shall pay any fees or costs associated with the fingerprints and background check required under this subsection. The commissioner may not release the results of a background check described in this subsection to any private entity.**

(l) The commissioner may check the qualifications, background, licensing status, and service history of each:

(1) equitable owner; ~~and~~

**(2) individual described in subsection (a)(4); and**

~~(2) (3)~~ **(3) applicant for registration as:**

(A) an originator; or

(B) a principal manager;

by accessing, upon availability, a multistate automated licensing system for mortgage brokers and originators, including the National Mortgage Licensing Database proposed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators; **and repository described in section 11(a)(16) of this chapter.** The equitable owner, the individual described in subsection (a)(4), or the applicant shall pay any fees or costs associated with a check conducted under this subsection.

SECTION 13. IC 23-2-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. A licensee may not continue engaging in the loan brokerage business unless the licensee's

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license is renewed biennially. A registrant may not continue:

(1) engaging in origination activities; **or**

**(2) acting as a principal manager;**

unless the registrant's certificate of registration is renewed biennially.

A licensee shall renew its license ~~and the certificates of registration of its registrant employees~~ by filing with the commissioner, at least thirty (30) days before the expiration of the ~~registration~~ **license**, an application containing any information the commissioner may require to indicate any material change from the information contained in the applicant's original application or any previous application. **A registrant may renew the registrant's certificate of registration by filing with the commissioner, at least thirty (30) days before the expiration of the registration, an application containing any information the commissioner may require to indicate any material change from the information contained in the applicant's original application or any previous application.**

SECTION 14. IC 23-2-5-10, AS AMENDED BY P.L.230-2007, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. (a) Whenever it appears to the commissioner that a person has engaged in or is about to engage in an act or a practice constituting a violation of this chapter or a rule or an order under this chapter, the commissioner may investigate and may issue, with a prior hearing if there exists no substantial threat of immediate irreparable harm or without a prior hearing, if there exists a substantial threat of immediate irreparable harm, orders and notices as the commissioner determines to be in the public interest, including cease and desist orders, orders to show cause, and notices. After notice and hearing, the commissioner may enter an order of rescission, restitution, or disgorgement, including interest at the rate of eight percent (8%) per year, directed to a person who has violated this chapter or a rule or order under this chapter.

(b) Upon the issuance of an order or notice without a prior hearing by the commissioner under subsection (a), the commissioner shall promptly notify the respondent and, if the subject of the order or notice is a registrant, the licensee for whom the registrant is employed:

- (1) that the order or notice has been issued;
- (2) of the reasons the order or notice has been issued; and
- (3) that upon the receipt of a written request the matter will be set down for a hearing to commence within fifteen (15) business days after receipt of the request unless the respondent consents to a later date.

If a hearing is not requested and not ordered by the commissioner, an

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order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of an opportunity for hearing, may modify or vacate the order or extend it until final determination.

(c) The commissioner may deny **an application for an initial or a renewal license or registration, and may** suspend or revoke the license of a licensee or the registration of a registrant if **the applicant,** the licensee, the registrant, or an ultimate equitable owner of **an applicant or of** a licensee:

(1) fails to maintain the bond required under section 5 of this chapter;

(2) has, within the most recent ten (10) years:

(A) been the subject of an adjudication or a determination by:

(i) a court with jurisdiction; or

(ii) an agency or administrator that regulates securities, commodities, banking, financial services, insurance, real estate, or the real estate appraisal industry;

in Indiana or in any other jurisdiction; and

(B) been found, after notice and opportunity for hearing, to have violated the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal laws of Indiana or any other jurisdiction;

(3) has:

(A) been denied the right to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry; or

(B) had the person's authority to do business in the securities, commodities, banking, financial services, insurance, real estate, or real estate appraisal industry revoked or suspended;

by Indiana or by any other state, federal, or foreign governmental agency or self regulatory organization;

(4) is insolvent;

(5) has violated any provision of this chapter;

(6) has knowingly filed with the commissioner any document or statement that:

(A) contains a false representation of a material fact;

(B) fails to state a material fact; or

(C) contains a representation that becomes false after the filing but during the term of a license or certificate of registration as provided in subsection (i);

(7) has:

(A) been convicted, within ten (10) years before the date of the

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1 application, renewal, or review, of any crime involving fraud  
 2 or deceit; or  
 3 (B) had a felony conviction (as defined in IC 35-50-2-1(b))  
 4 within five (5) years before the date of the application,  
 5 renewal, or review;  
 6 (8) if the person is a licensee or principal manager, has failed to  
 7 reasonably supervise the person's originators or employees to  
 8 ensure their compliance with this chapter;  
 9 (9) is on the most recent tax warrant list supplied to the  
 10 commissioner by the department of state revenue; or  
 11 (10) has engaged in dishonest or unethical practices in the loan  
 12 broker business, as determined by the commissioner.  
 13 (d) The commissioner may do either of the following:  
 14 (1) Censure:  
 15 (A) a licensee;  
 16 (B) an officer, a director, or an ultimate equitable owner of a  
 17 licensee;  
 18 (C) a registrant; or  
 19 (D) any other person;  
 20 who violates or causes a violation of this chapter.  
 21 (2) Permanently bar any person described in subdivision (1) from  
 22 being:  
 23 (A) licensed or registered under this chapter; or  
 24 (B) employed by or affiliated with a person licensed or  
 25 registered under this chapter;  
 26 if the person violates or causes a violation of this chapter.  
 27 (e) The commissioner may not enter a final order:  
 28 (1) denying, suspending, or revoking the license of a licensee or  
 29 the registration of a registrant; or  
 30 (2) imposing other sanctions;  
 31 without prior notice to all interested parties, opportunity for a hearing,  
 32 and written findings of fact and conclusions of law. However, the  
 33 commissioner may by summary order deny, suspend, or revoke a  
 34 license or certificate of registration pending final determination of any  
 35 proceeding under this section or before any proceeding is initiated  
 36 under this section. Upon the entry of a summary order, the  
 37 commissioner shall promptly notify all interested parties that the  
 38 summary order has been entered, of the reasons for the summary order,  
 39 and that upon receipt by the commissioner of a written request from a  
 40 party, the matter will be set for hearing to commence within fifteen  
 41 (15) business days after receipt of the request. If no hearing is  
 42 requested and none is ordered by the commissioner, the order remains

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in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of the hearing has been given to all interested persons and the hearing has been held, may modify or vacate the order or extend it until final determination.

(f) IC 4-21.5 does not apply to a proceeding under this section.

(g) If a registrant seeks to transfer the registrant's registration to another licensee who desires to have the registrant engage in origination activities or serve as a principal manager, whichever applies, the registrant shall, before the registrant conducts origination activities or serves as a principal manager for the new employer, submit to the commissioner, on a form prescribed by the commissioner, a registration application, as required by section 5 of this chapter.

(h) If the employment of a registrant is terminated, whether:

(1) voluntarily by the registrant; or

(2) by the licensee employing the registrant;

the licensee that employed the registrant shall, not later than five (5) days after the termination, notify the commissioner of the termination and the reasons for the termination.

(i) If a material fact or statement included in an application under this chapter changes after the application has been submitted, the applicant shall provide written notice to the commissioner of the change. The commissioner may revoke or refuse to renew the license or registration of any person who:

(1) is required to submit a written notice under this subsection and fails to provide the required notice within two (2) business days after the person discovers or should have discovered the change; or

(2) would not qualify for licensure or registration under this chapter as a result of the change in a material fact or statement.

SECTION 15. IC 23-2-5-11, AS AMENDED BY P.L.48-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 11. (a) The commissioner may do the following:

(1) Adopt rules under IC 4-22-2 to implement this chapter.

(2) Make investigations and examinations:

(A) in connection with any application for licensure or for registration of a licensee or registrant or with any license or certificate of registration already granted; or

(B) whenever it appears to the commissioner, upon the basis of a complaint or information, that reasonable grounds exist for the belief that an investigation or examination is necessary or advisable for the more complete protection of the interests

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- 1 of the public.
- 2 (3) Charge as costs of investigation or examination all reasonable
- 3 expenses, including a per diem prorated upon the salary of the
- 4 commissioner or employee and actual traveling and hotel
- 5 expenses. All reasonable expenses are to be paid by the party or
- 6 parties under investigation or examination if the party has violated
- 7 this chapter.
- 8 (4) Issue notices and orders, including cease and desist notices
- 9 and orders, after making an investigation or examination under
- 10 subdivision (2). The commissioner may also bring an action on
- 11 behalf of the state to enjoin a person from violating this chapter.
- 12 The commissioner shall notify the person that an order or notice
- 13 has been issued, the reasons for it, and that a hearing will be set
- 14 within fifteen (15) days after the commissioner receives a written
- 15 request from the person requesting a hearing.
- 16 (5) Sign all orders, official certifications, documents, or papers
- 17 issued under this chapter or delegate the authority to sign any of
- 18 those items to a deputy.
- 19 (6) Hold and conduct hearings.
- 20 (7) Hear evidence.
- 21 (8) Conduct inquiries with or without hearings.
- 22 (9) Receive reports of investigators or other officers or employees
- 23 of the state of Indiana or of any municipal corporation or
- 24 governmental subdivision within the state.
- 25 (10) Administer oaths, or cause them to be administered.
- 26 (11) Subpoena witnesses, and compel them to attend and testify.
- 27 (12) Compel the production of books, records, and other
- 28 documents.
- 29 (13) Order depositions to be taken of any witness residing within
- 30 or without the state. The depositions shall be taken in the manner
- 31 prescribed by law for depositions in civil actions and made
- 32 returnable to the commissioner.
- 33 (14) Order that each witness appearing under the commissioner's
- 34 order to testify before the commissioner shall receive the fees and
- 35 mileage allowances provided for witnesses in civil cases.
- 36 (15) Provide interpretive opinions or issue determinations that the
- 37 commissioner will not institute a proceeding or an action under
- 38 this chapter against a specified person for engaging in a specified
- 39 act, practice, or course of business if the determination is
- 40 consistent with this chapter. The commissioner may adopt rules
- 41 to establish fees for individuals requesting an interpretive opinion
- 42 or a determination under this subdivision. A person may not

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request an interpretive opinion or a determination concerning an activity that:

(A) occurred before; or

(B) is occurring on;

the date the opinion or determination is requested.

**(16) Subject to subsection (f), designate a multistate automated licensing system and repository, established and operated by a third party, to serve as the sole entity responsible for:**

**(A) processing applications for:**

**(i) licenses and certificates of registration under this chapter; and**

**(ii) renewals of licenses and certificates of registration under this chapter; and**

**(B) performing other services that the commissioner determines are necessary for the orderly administration of the division's licensing and registration system.**

**A multistate automated licensing system and repository described in this subdivision may include the National Mortgage Licensing System established by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The commissioner may take any action necessary to allow the division to participate in a multistate automated licensing system and repository.**

(b) If a witness, in any hearing, inquiry, or investigation conducted under this chapter, refuses to answer any question or produce any item, the commissioner may file a written petition with the circuit or superior court in the county where the hearing, investigation, or inquiry in question is being conducted requesting a hearing on the refusal. The court shall hold a hearing to determine if the witness may refuse to answer the question or produce the item. If the court determines that the witness, based upon the witness's privilege against self-incrimination, may properly refuse to answer or produce an item, the commissioner may make a written request that the court grant use immunity to the witness. Upon written request of the commissioner, the court shall grant use immunity to a witness. The court shall instruct the witness, by written order or in open court, that:

(1) any evidence the witness gives, or evidence derived from that evidence, may not be used in any criminal proceedings against that witness, unless the evidence is volunteered by the witness or is not responsive to a question; and

(2) the witness must answer the questions asked and produce the

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1 items requested.

2 A grant of use immunity does not prohibit evidence that the witness  
3 gives in a hearing, investigation, or inquiry from being used in a  
4 prosecution for perjury under IC 35-44-2-1. If a witness refuses to give  
5 the evidence after the witness has been granted use immunity, the court  
6 may find the witness in contempt.

7 (c) In any prosecution, action, suit, or proceeding based upon or  
8 arising out of this chapter, the commissioner may sign a certificate  
9 showing compliance or noncompliance with this chapter by any person.  
10 This shall constitute prima facie evidence of compliance or  
11 noncompliance with this chapter and shall be admissible in evidence  
12 in any action at law or in equity to enforce this chapter.

13 (d) If:

14 (1) a person disobeys any lawful:

15 (A) subpoena issued under this chapter; or

16 (B) order or demand requiring the production of any books,  
17 accounts, papers, records, documents, or other evidence or  
18 information as provided in this chapter; or

19 (2) a witness refuses to:

20 (A) appear when subpoenaed;

21 (B) testify to any matter about which the witness may be  
22 lawfully interrogated; or

23 (C) take or subscribe to any oath required by this chapter;

24 the circuit or superior court of the county in which the hearing, inquiry,  
25 or investigation in question is held, if demand is made or if, upon  
26 written petition, the production is ordered to be made, or the  
27 commissioner or a hearing officer appointed by the commissioner, shall  
28 compel compliance with the lawful requirements of the subpoena,  
29 order, or demand, compel the production of the necessary or required  
30 books, papers, records, documents, and other evidence and  
31 information, and compel any witness to attend in any Indiana county  
32 and to testify to any matter about which the witness may lawfully be  
33 interrogated, and to take or subscribe to any oath required.

34 (e) If a person fails, refuses, or neglects to comply with a court order  
35 under this section, the person shall be punished for contempt of court.

36 **(f) The commissioner's authority to designate a multistate**  
37 **automated licensing system and repository under subsection**  
38 **(a)(16) is subject to the following:**

39 **(1) The commissioner may not require any person exempt**  
40 **from licensure or registration under this chapter, or any**  
41 **employee or agent of an exempt person, to:**

42 **(A) submit information to; or**

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(B) participate in;  
 the multistate automated licensing system and repository.  
 (2) The commissioner may require a person required under  
 this chapter to submit information to the multistate  
 automated licensing system and repository to pay a processing  
 fee considered reasonable by the commissioner.

SECTION 16. IC 23-2-5-18 IS AMENDED TO READ AS  
 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 18. (a) Each loan  
 broker agreement shall be given an account number. Each ~~licensee~~  
**person licensed or required to be licensed under this chapter** shall  
 keep and maintain the following records or their electronic equivalent:

(1) A file for each borrower or proposed borrower that contains  
 the following:

(A) The name and address of the borrower or any proposed  
 borrower.

(B) A copy of the signed loan broker agreement.

(C) A copy of any other papers or instruments used in  
 connection with the loan broker agreement and signed by the  
 borrower or any proposed borrower.

(D) If a loan was obtained for the borrower, the name and  
 address of the creditor.

(E) If a loan is accepted by the borrower, a copy of the loan  
 agreement.

(F) The amount of the loan broker's fee that the borrower has  
 paid. If there is an unpaid balance, the status of any collection  
 efforts.

(2) All receipts from or for the account of borrowers or any  
 proposed borrowers and all disbursements to or for the account of  
 borrowers or any proposed borrowers, recorded so that the  
 transactions are readily identifiable.

(3) A general ledger that shall be posted at least monthly, and a  
 trial balance sheet and profit and loss statement prepared within  
 thirty (30) days of the commissioner's request for the information.

(4) A sample of:

(A) all advertisements, pamphlets, circulars, letters, articles,  
 or communications published in any newspaper, magazine, or  
 periodical;

(B) scripts of any recording, radio, or television  
 announcement; and

(C) any sales kits or literature;

to be used in solicitation of borrowers.

(b) The records listed in subsection (a) shall be kept for a period of

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two (2) years in the ~~licensee's~~ **loan broker's** principal office and must be separate or readily identifiable from the records of any other business that is conducted in the office of the loan broker.

**(c) If a breach of the security of any records:**

**(1) maintained by a loan broker under this section; and**

**(2) containing the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers;**

**occurs, the loan broker is subject to the disclosure requirements under IC 24-4.9-3, unless the loan broker is exempt from the disclosure requirements under IC 24-4.9-3-4.**

**(d) A person who is:**

**(1) licensed or required to be licensed under this chapter; or**

**(2) registered or required to be registered under this chapter;**

**may not dispose of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers without first shredding, incinerating, mutilating, erasing, or otherwise rendering the information illegible or unusable.**

SECTION 17. IC 23-2-5-19, AS AMENDED BY P.L.230-2007, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 19. (a) The following persons are exempt from the requirements of sections 4, 5, 6, 9, 17, 18, and 21 of this chapter:

(1) Any attorney while engaging in the practice of law.

(2) Any certified public accountant, public accountant, or accountant practitioner holding a certificate or registered under IC 25-2.1 while performing the practice of accountancy (as defined by IC 25-2.1-1-10).

(3) Any person licensed as a real estate broker or salesperson under IC 25-34.1 to the extent that the person is rendering loan related services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required.

(4) Any broker-dealer, agent, or investment advisor registered under IC 23-19.

(5) Any person that:

(A) procures;

(B) promises to procure; or

(C) assists in procuring;

a loan that is not subject to the Truth in Lending Act (15 U.S.C. 1601 through 1667e).

(6) Any community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from the Indiana

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housing and community development authority established by  
IC 5-20-1-3.

(7) The Indiana housing and community development authority.

(8) Subject to subsection (e), and except as provided in subsection  
(f); any person authorized to:

(A) sell and service a loan for the Federal National Mortgage  
Association or the Federal Home Loan Mortgage Association;

(B) issue securities backed by the Government National  
Mortgage Association;

(C) make loans insured by the United States Department of  
Housing and Urban Development or the United States  
Department of Agriculture Rural Housing Service;

(D) act as a supervised lender or nonsupervised automatic  
lender of the United States Department of Veterans Affairs; or

(E) act as a correspondent of loans insured by the United  
States Department of Housing and Urban Development; if the  
person closes at least twenty-five (25) such insured loans in  
Indiana during each calendar year.

~~(9)~~ (8) Any person who is a creditor, or proposed to be a creditor,  
for any loan.

(b) As used in this chapter, "bona fide third party fee" includes fees  
for the following:

(1) Credit reports, investigations, and appraisals performed by a  
person who holds a license or certificate as a real estate appraiser  
under IC 25-34.1-8.

(2) If the loan is to be secured by real property, title examinations,  
an abstract of title, title insurance, a property survey, and similar  
purposes.

(3) The services provided by a loan broker in procuring possible  
business for a lending institution if the fees are paid by the  
lending institution.

(c) As used in this section, "successful procurement of a loan"  
means that a binding commitment from a creditor to advance money  
has been received and accepted by the borrower.

(d) The burden of proof of any exemption or classification provided  
in this chapter is on the party claiming the exemption or classification.

(e) A person claiming an exemption under subsection (a)(8) shall,  
as a condition to receiving or maintaining the exemption, file a notice  
every twenty-four (24) months on a form acceptable to the  
commissioner. The notice required under this subsection must:

(1) provide the name and business address of each originator  
employed by the person to originate loans in Indiana;

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(2) include all other information required by the commissioner;  
and

(3) be accompanied by a fee of four hundred dollars (\$400).

If any information included in a notice under this subsection changes after the notice has been submitted, the person shall provide written notice to the commissioner of the change. The commissioner's receipt of a notice under this subsection shall not be considered to be a determination or confirmation by the commissioner of the validity of the claimed exemption.

(f) An exemption described in subsection (a)(8) does not extend to:

(1) a subsidiary of the exempt person; or

(2) an unaffiliated third party.

An exemption that applies to a person under subsection (a)(8)(D) does not extend to a registered United States Department of Veterans Affairs agent.

SECTION 18. IC 23-2-5-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 20. (a) As used in this section, "fully indexed rate" means:

(1) for a fixed rate mortgage transaction in which the interest rate will not vary during the term of the mortgage, the rate as of the date of closing;

(2) for a mortgage transaction in which the interest varies according to an index, the sum of the index rate as of the date of closing plus the maximum margin permitted at any time under the mortgage agreement; or

(3) for all other mortgage transactions in which the rate may vary at any time during the term of the mortgage, the maximum rate that may be charged during the term of the mortgage.

(b) A person shall not, in connection with a contract for the services of a loan broker, either directly or indirectly, do any of the following:

(1) Employ any device, scheme, or artifice to defraud.

(2) Make any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading.

(3) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

(4) Collect or solicit any consideration, except a bona fide third party fee, in connection with a loan until the loan has been closed.

(5) Receive any funds if the person knows that the funds were generated as a result of a fraudulent act.

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(6) File or cause to be filed with a county recorder any document that the person knows:

(A) contains:

(i) a misstatement; or

(ii) an untrue statement;

of a material fact; or

(B) omits a statement of a material fact that is necessary to make the statements that are made, in the light of circumstances under which they are made, not misleading.

(7) Knowingly release or disclose the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers.

(8) Engage in any reckless or negligent activity allowing the release or disclosure of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers. An activity described in this subdivision includes an action prohibited by section 18(d) of this chapter.

(9) Recommend a loan to, or procure a loan on behalf of, a prospective borrower, without reasonable grounds to believe the loan is suitable for the prospective borrower based on a reasonable inquiry concerning:

(A) the prospective borrower's present and future income, expenses, assets, and liabilities;

(B) the prospective borrower's credit history; and

(C) any other factors likely to affect the prospective borrower's ability to repay the loan, including the borrower's ability to repay the loan at its fully indexed rate.

(c) A person who commits an act described in subsection (b) is subject to sections 10, 14, 15, and 16 of this chapter.

SECTION 19. IC 23-2-5-22, AS ADDED BY P.L.48-2006, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 22. (a) An appeal may be taken by:

(1) any ~~loan broker or principal upon~~ **person** whose application for ~~registration for a loan broker~~ **an initial or a renewal** license **under this chapter** is granted or denied, from any final order of the commissioner concerning the application; ~~or registration;~~

(2) any applicant for **initial or renewed** registration as a ~~loan broker principal manager~~ **or an originator**, from any final order of the commissioner affecting the application; ~~or registration as a loan broker or originator;~~

(3) any person against whom a civil penalty is imposed under

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section 14(a) of this chapter, from the final order of the commissioner imposing the civil penalty; or

(4) any person who is named as a respondent, from any final order issued by the commissioner under section 10 or 11 of this chapter; to the Marion circuit court or to the circuit or superior court of the county where the person taking the appeal resides or maintains a place of business.

(b) Not later than twenty (20) days after the entry of the order, the commissioner shall be served with:

(1) a written notice of the appeal stating the court to which the appeal will be taken and the grounds upon which a reversal of the final order is sought;

(2) a demand in writing from the appellant for a certified transcript of the record and of all papers on file in the commissioner's office affecting or relating to the order; and

(3) a bond in the penal sum of five hundred dollars (\$500) to the state of Indiana with sufficient surety to be approved by the commissioner, conditioned upon the faithful prosecution of the appeal to final judgment and the payment of all costs that are adjudged against the appellant.

(c) Not later than ten (10) days after the commissioner is served with the items listed in subsection (b), the commissioner shall make, certify, and deliver to the appellant the transcript, and the appellant shall, not later than five (5) days after the date the appellant receives the transcript, file the transcript and a copy of the notice of appeal with the clerk of the court. The notice of appeal serves as the appellant's complaint. The commissioner may appear and file any motion or pleading and form the issue. The cause shall be entered on the trial calendar for trial de novo and given precedence over all matters pending in the court.

(d) The court shall receive and consider any pertinent oral or written evidence concerning the order of the commissioner from which the appeal is taken. If the order of the commissioner is reversed, the court shall in its mandate specifically direct the commissioner as to the commissioner's further action in the matter. The commissioner is not barred from revoking or altering the order for any proper cause that accrues or is discovered after the order is entered. If the order is affirmed, the appellant is not barred after thirty (30) days from the date the order is affirmed from filing a new application if the application is not otherwise barred or limited. During the pendency of the appeal, the order from which the appeal is taken is not suspended but remains in effect unless otherwise ordered by the court. An appeal may be taken

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from the judgment of the court on the same terms and conditions as an appeal is taken in civil actions.

SECTION 20. IC 24-4.5-1-301, AS AMENDED BY P.L.57-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 301. General Definitions — In addition to definitions appearing in subsequent chapters in this article:

(1) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(2) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products; "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(3) "Average daily balance" means the sum of each of the daily balances in a billing cycle divided by the number of days in the billing cycle, and if the billing cycle is a month, the creditor may elect to treat the number of days in each billing cycle as thirty (30).

(4) "Closing costs" with respect to a debt secured by an interest in land includes:

- (a) fees or premiums for title examination, title insurance, or similar purposes, including surveys;
- (b) fees for preparation of a deed, settlement statement, or other documents;
- (c) escrows for future payments of taxes and insurance;
- (d) fees for notarizing deeds and other documents;
- (e) appraisal fees; and
- (f) credit reports.

(5) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it.

(6) "Consumer credit" means credit offered or extended to a consumer primarily for a personal, family, or household purpose.

(7) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(8) "Creditor" means a person:

- (a) who regularly engages in the extension of consumer credit that is subject to a credit service charge or loan finance charge, as applicable, or is payable **by written agreement in more than**

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1           **four (4) installments (not including a down payment);** and  
 2           (b) to whom the obligation is initially payable, either on the face  
 3           of the note or contract, or by agreement when there is not a note  
 4           or contract.

5           **The term does not include a person that is licensed or registered**  
 6           **under IC 23-2-5.**

7           (9) "Earnings" means compensation paid or payable for personal  
 8           services, whether denominated as wages, salary, commission, bonus,  
 9           or otherwise, and includes periodic payments under a pension or  
 10          retirement program.

11          (10) "Lender credit card or similar arrangement" means an  
 12          arrangement or loan agreement, other than a seller credit card, pursuant  
 13          to which a lender gives a debtor the privilege of using a credit card,  
 14          letter of credit, or other credit confirmation or identification in  
 15          transactions out of which debt arises:

16               (a) by the lender's honoring a draft or similar order for the  
 17               payment of money drawn or accepted by the debtor;

18               (b) by the lender's payment or agreement to pay the debtor's  
 19               obligations; or

20               (c) by the lender's purchase from the obligee of the debtor's  
 21               obligations.

22          (11) "Official fees" means:

23               (a) fees and charges prescribed by law which actually are or will  
 24               be paid to public officials for determining the existence of or for  
 25               perfecting, releasing, or satisfying a security interest related to a  
 26               consumer credit sale, consumer lease, or consumer loan; or

27               (b) premiums payable for insurance in lieu of perfecting a security  
 28               interest otherwise required by the creditor in connection with the  
 29               sale, lease, or loan, if the premium does not exceed the fees and  
 30               charges described in paragraph (a) which would otherwise be  
 31               payable.

32          (12) "Organization" means a corporation, a government or  
 33          governmental subdivision, or an agency, a trust, an estate, a  
 34          partnership, a limited liability company, a cooperative, or an  
 35          association.

36          (13) "Payable in installments" means that payment is required or  
 37          permitted by written agreement to be made in more than four (4)  
 38          installments not including a down payment.

39          (14) "Person" includes a natural person or an individual and an  
 40          organization.

41          (15) "Person related to" with respect to an individual means:

42               (a) the spouse of the individual;

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- (b) a brother, brother-in-law, sister, sister-in-law of the individual;
- (c) an ancestor or lineal descendants of the individual or the individual's spouse; and
- (d) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

"Person related to" with respect to an organization means:

- (a) a person directly or indirectly controlling, controlled by, or under common control with the organization;
- (b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;
- (c) the spouse of a person related to the organization; and
- (d) a relative by blood or marriage of a person related to the organization who shares the same home with the person.

(16) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(17) "Mortgage transaction" means a ~~transaction~~ **consumer credit sale or consumer loan** in which a ~~first~~ mortgage, deed of trust, or a land contract which constitutes a ~~first~~ lien is created or retained against land **upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.**

(18) "Regularly engaged" means a person who extends consumer credit more than:

- (a) twenty-five (25) times; or
  - (b) five (5) times for transactions secured by a dwelling;
- in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year.

(19) "Seller credit card" means an arrangement which gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or from that person and any other person. The term includes a card that is issued by a person, that is in the name of the seller, and that can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

(20) "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business:

- (a) organized, chartered, or holding an authorization certificate

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under the laws of a state or of the United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate, or deposit account; and  
 (b) subject to supervision by an official or agency of a state or of the United States.

(21) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage.

(22) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

- (a) controls;
- (b) is controlled by; or
- (c) is under common control with;

the person subject to this article.

**(23) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:**

- (a) condominium unit;**
- (b) cooperative unit;**
- (c) mobile home; or**
- (d) trailer;**

**that is used as a residence.**

SECTION 21. IC 24-4.5-2-104 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 104. (1) Except as provided in subsection (2), "consumer credit sale" is a sale of goods, services, or an interest in land in which:

- (a) credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;
- (b) the buyer is a person other than an organization;
- (c) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;
- (d) either the debt is payable in installments or a credit service charge is made; and
- (e) with respect to a sale of goods or services, either:
  - (i) the amount financed does not exceed fifty thousand dollars (\$50,000); or**
  - (ii) the debt is secured by a mortgage transaction or by personal property used or expected to be used as the principal dwelling of the buyer.**

(2) Unless the sale is made subject to this article by agreement (IC 24-4.5-2-601), "consumer credit sale" does not include ~~(a)~~ a sale in

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1 which the seller allows the buyer to purchase goods or services  
 2 pursuant to a lender credit card or similar arrangement. ~~or (b) except~~  
 3 ~~as provided with respect to disclosure (IC 24-4.5-2-301); debtors'~~  
 4 ~~remedies (IC 24-4.5-5-201); providing payoff amounts (IC~~  
 5 ~~24-4.5-2-209); and powers and functions of the department (IC~~  
 6 ~~24-4.5-6-101); a sale of an interest in land which is a mortgage~~  
 7 ~~transaction (as defined in IC 24-4.5-1-301(17)).~~

8 SECTION 22. IC 24-4.5-2-105 IS AMENDED TO READ AS  
 9 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 105. Definitions:  
 10 "Goods"; "Merchandise Certificate"; "Services"; "Sale of Goods"; "Sale  
 11 of Services"; "Sale of an Interest in Land"; "Precomputed".

12 (1) "Goods" includes goods not in existence at the time the  
 13 transaction is entered into and merchandise certificates, but excludes  
 14 money, chattel paper, documents of title, and instruments.

15 (2) "Merchandise certificate" means a writing issued by a seller not  
 16 redeemable in cash and usable in its face amount in lieu of cash in  
 17 exchange for goods or services.

18 (3) "Services" includes (a) work, labor, and other personal services,  
 19 (b) privileges with respect to transportation, hotel and restaurant  
 20 accommodations, education, entertainment, recreation, physical  
 21 culture, hospital accommodations, funerals, cemetery accommodations,  
 22 and the like, and (c) insurance provided by a person other than the  
 23 insurer.

24 (4) "Sale of goods" includes any agreement in the form of a bailment  
 25 or lease of goods if the bailee or lessee agrees to pay as compensation  
 26 for use a sum substantially equivalent to or in excess of the aggregate  
 27 value of the goods involved and it is agreed that the bailee or lessee  
 28 will become, or for no other or a nominal consideration has the option  
 29 to become, the owner of the goods upon full compliance with ~~his~~ **the**  
 30 **bailee's or lessee's** obligations under the agreement.

31 (5) "Sale of services" means furnishing or agreeing to furnish  
 32 services and includes making arrangements to have services furnished  
 33 by another.

34 (6) "Sale of an interest in land" includes **a mortgage transaction or**  
 35 **a lease in which the mortgagor or the** lessee has an option to purchase  
 36 the interest and all or a substantial part of the rental or other payments  
 37 previously made by ~~him~~ **the mortgagor or the lessee** are applied to the  
 38 purchase price.

39 (7) A sale, refinancing, or consolidation is "precomputed" if the debt  
 40 is expressed as a sum comprising the amount financed and the amount  
 41 of the credit service charge computed in advance.

42 SECTION 23. IC 24-4.5-2-107 IS AMENDED TO READ AS



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1 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 107. Definition;  
 2 "Seller" - Except as otherwise provided, "seller" **means a person**  
 3 **regularly engaged as a creditor in making consumer credit sales.**  
 4 **The term** includes an assignee of the seller's right to payment but use  
 5 of the term does not in itself impose on an assignee any obligation of  
 6 the seller with respect to events occurring before the assignment.

7 SECTION 24. IC 24-4.5-2-201, AS AMENDED BY P.L.57-2006,  
 8 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 9 JANUARY 1, 2009]: Sec. 201. Credit Service Charge for Consumer  
 10 Credit Sales other than Revolving Charge Accounts — (1) With respect  
 11 to a consumer credit sale, other than a sale pursuant to a revolving  
 12 charge account, a seller may contract for and receive a credit service  
 13 charge not exceeding that permitted by this section.

14 (2) The credit service charge, calculated according to the actuarial  
 15 method, may not exceed the equivalent of the greater of either of the  
 16 following:

17 (a) the total of:

18 (i) thirty-six percent (36%) per year on that part of the unpaid  
 19 balances of the amount financed which is three hundred  
 20 dollars (\$300) or less;

21 (ii) twenty-one percent (21%) per year on that part of the  
 22 unpaid balances of the amount financed which is more than  
 23 three hundred dollars (\$300) but does not exceed one thousand  
 24 dollars (\$1,000); and

25 (iii) fifteen percent (15%) per year on that part of the unpaid  
 26 balances of the amount financed which is more than one  
 27 thousand dollars (\$1,000); or

28 (b) twenty-one percent (21%) per year on the unpaid balances of  
 29 the amount financed.

30 (3) **Except that not more than twenty-five percent (25%) of the**  
 31 **credit service charge on a consumer credit sale that is a mortgage**  
 32 **transaction may be precomputed,** this section does not limit or  
 33 restrict the manner of contracting for the credit service charge, whether  
 34 by way of add-on, discount, or otherwise, so long as the rate of the  
 35 credit service charge does not exceed that permitted by this section. If  
 36 the sale is precomputed:

37 (a) the credit service charge may be calculated on the assumption  
 38 that all scheduled payments will be made when due; and

39 (b) the effect of prepayment is governed by the provisions on  
 40 rebate upon prepayment (IC 24-4.5-2-210).

41 (4) For the purposes of this section, the term of a sale agreement  
 42 commences with the date the credit is granted or, if goods are delivered

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or services performed more than thirty (30) days after that date, with the date of commencement of delivery or performance except as set forth below:

(a) Delays attributable to the customer. Where the customer requests delivery after the thirty (30) day period or where delivery occurs after the thirty (30) day period for a reason attributable to the customer (including but not limited to failure to close on a residence or failure to obtain lease approval), the term of the sale agreement shall commence with the date credit is granted.

(b) Partial Deliveries. Where any portion of the order has been delivered within the thirty (30) day period, the term of the sale agreement shall commence with the date credit is granted.

Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the seller may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations the seller may reasonably establish, the seller may make the same credit service charge on all amounts financed within a specified range. A credit service charge so made does not violate subsection (2) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (2); and

(b) when applied to the lowest amount within each range, it does not produce a rate of credit service charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) Notwithstanding subsection (2), the seller may contract for and receive a minimum credit service charge of not more than thirty dollars (\$30). The minimum credit service charge allowed under this subsection may be imposed only if:

(a) the ~~borrower~~ **debtor** prepays in full a consumer credit sale, refinancing, or consolidation, regardless of whether the sale, refinancing, or consolidation is precomputed;

(b) the sale, refinancing, or consolidation prepaid by the ~~borrower~~ **debtor** is subject to a credit service charge that:

(i) is contracted for by the parties; and

(ii) does not exceed the rate prescribed in subsection (2); and

(c) the credit service charge earned at the time of prepayment is less than the minimum credit service charge contracted for under

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1 this subsection.

2 (7) The amounts of three hundred dollars (\$300) and one thousand  
3 dollars (\$1,000) in subsection (2) are subject to change pursuant to the  
4 provisions on adjustment of dollar amounts (IC 24-4.5-1-106).

5 (8) The amount of thirty dollars (\$30) in subsection (6) is subject to  
6 change under the provisions on adjustment of dollar amounts  
7 (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the  
8 Reference Base Index to be used under this subsection is the Index for  
9 October 1992.

10 SECTION 25. IC 24-4.5-2-203.5 IS AMENDED TO READ AS  
11 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 203.5.  
12 Delinquency Charges – (1) With respect to a consumer credit sale,  
13 refinancing, or consolidation, **other than a first lien mortgage**  
14 **transaction**, the parties may contract for a delinquency charge of not  
15 more than five dollars (\$5) on any installment or minimum payment  
16 due not paid in full within ten (10) days after its scheduled due date.  
17 **For a first lien mortgage transaction, the parties may contract for**  
18 **a delinquency charge of not more than five percent (5%) of the**  
19 **contracted payment amount.**

20 (2) A delinquency charge under this section may be collected only  
21 once on an installment however long it remains in default. A  
22 delinquency charge on consumer credit sales made under a revolving  
23 charge account may be applied each month that the payment is less  
24 than the minimum required payment. A delinquency charge may be  
25 collected any time after it accrues. No delinquency charge may be  
26 collected if the installment has been deferred and a deferral charge  
27 (IC 24-4.5-2-204) has been paid or incurred.

28 (3) **Except for a first lien mortgage transaction**, a delinquency  
29 charge may not be collected on an installment or payment due that is  
30 paid in full within ten (10) days after its scheduled due date even  
31 though an earlier maturing installment, minimum payment, or a  
32 delinquency charge on:

33 (a) an earlier installment; or

34 (b) payment due;

35 may not have been paid in full. For purposes of this subsection,  
36 payments are applied first to current installments or payments due and  
37 then to delinquent installments or payments due.

38 (4) If two (2) installments or parts of two (2) installments of a  
39 precomputed consumer credit sale are in default for ten (10) days or  
40 more, the creditor may elect to convert the consumer credit sale from  
41 a precomputed consumer credit sale to a consumer credit sale in which  
42 the credit service charge is based on unpaid balances. A creditor that

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1 makes this election shall make a rebate under the provisions on rebates  
 2 upon prepayment under IC 24-4.5-2-210 as of the maturity date of the  
 3 first delinquent installment, and thereafter may make a credit service  
 4 charge as authorized by the provisions on credit service charges for  
 5 consumer credit sales under IC 24-4.5-2-201. The amount of the rebate  
 6 shall not be reduced by the amount of any permitted minimum charge  
 7 under IC 24-4.5-2-210. Any deferral charges made on installments due  
 8 at or after the maturity date of the first delinquent installment shall be  
 9 rebated, and no further deferral charges shall be made.

10 (5) The amount of five dollars (\$5) in subsection (1) is subject to  
 11 change under the section on adjustment of dollar amounts  
 12 (IC 24-4.5-1-106).

13 (6) If the parties provide by contract for a delinquency charge that  
 14 is subject to change, the seller shall disclose in the contract that the  
 15 amount of the delinquency charge is subject to change as allowed by  
 16 IC 24-4.5-1-106.

17 SECTION 26. IC 24-4.5-2-209 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 209. Right to Prepay -

19 (1) Subject to the provisions on rebate upon prepayment  
 20 (IC 24-4.5-2-210), the buyer may prepay in full the unpaid balance of  
 21 a consumer credit sale, refinancing, or consolidation at any time  
 22 without penalty.

23 (2) At the time of prepayment of a credit sale not subject to the  
 24 provisions of rebate upon prepayment (IC 24-4.5-2-210), the total  
 25 credit service charge, including the prepaid credit service charge, may  
 26 not exceed the maximum charge allowed under this chapter for the  
 27 period the credit sale was in effect.

28 (3) The creditor or mortgage servicer shall provide an accurate  
 29 payoff of the consumer credit sale to the debtor within ten (10)  
 30 calendar days after the creditor or mortgage servicer receives the  
 31 debtor's written request for the accurate consumer credit sale payoff  
 32 amount. A creditor or mortgage servicer who fails to provide the  
 33 accurate consumer credit sale payoff amount is liable for:

34 (A) one hundred dollars (\$100) if an accurate consumer credit  
 35 sale payoff amount is not provided by the creditor or mortgage  
 36 servicer within ten (10) calendar days after the creditor or  
 37 mortgage servicer receives the debtor's first written request;  
 38 and

39 (B) the greater of:

40 (i) one hundred dollars (\$100); or

41 (ii) the credit service charge that accrues on the sale from  
 42 the date the creditor or mortgage servicer receives the first

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1 written request until the date on which the accurate  
 2 consumer credit sale payoff amount is provided;  
 3 if an accurate consumer credit sale payoff amount is not  
 4 provided by the creditor or mortgage servicer within ten (10)  
 5 calendar days after the creditor or mortgage servicer receives  
 6 the debtor's second written request, and the creditor or  
 7 mortgage servicer failed to comply with clause (A).

8 A liability under this subsection is an excess charge under  
 9 IC 24-4.5-202.

10 **(4) This subsection applies to a consumer credit sale that is a**  
 11 **mortgage transaction. The creditor or mortgage servicer shall**  
 12 **respond to a written offer made in connection with a proposed**  
 13 **short sale not later than ten (10) calendar days after the date of the**  
 14 **offer. As used in this subsection, "short sale" means a transaction**  
 15 **in which the property that is the subject of a mortgage transaction**  
 16 **is sold for an amount that is less than the amount of the debtor's**  
 17 **outstanding obligation under the mortgage transaction. A creditor**  
 18 **or mortgage servicer that fails to respond to an offer within the**  
 19 **time prescribed by this subsection is liable under the terms set**  
 20 **forth in subsection (3), as if the creditor or mortgage servicer had**  
 21 **failed to provide a consumer credit sale payoff amount.**

22 SECTION 27. IC 24-4.5-3-103 IS AMENDED TO READ AS  
 23 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 103. Definitions  
 24 in Chapter – The following definitions apply to this Article:

25 "Consumer loan" ..... Section 3-104  
 26 "Consumer related loan" ..... Section 3-602 (1)  
 27 "Lender" ..... Section 3-107 (1)  
 28 "Loan" ..... Section 3-106  
 29 "Loan finance charge" ..... Section 3-109  
 30 ~~"Loan primarily secured by an~~  
 31 ~~interest in land"~~ ..... ~~Section 3-105~~  
 32 "Precomputed" ..... Section 3-107 (2)  
 33 "Principal" ..... Section 3-107 (3)  
 34 "Revolving loan account" ..... Section 3-108  
 35 "Supervised lender" ..... Section 3-501 (2)  
 36 "Supervised loan" ..... 3-501 (1)

37 SECTION 28. IC 24-4.5-3-104 IS AMENDED TO READ AS  
 38 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 104. ~~Except with~~  
 39 ~~respect to a loan primarily secured by an interest in land~~  
 40 ~~(IC 24-4.5-3-105), "Consumer loan" is a loan made by a person~~  
 41 ~~regularly engaged in the business of making loans in which:~~

42 (a) the debtor is a person other than an organization;

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(b) the debt is primarily for a personal, family, or household purpose;

(c) either the debt is payable in installments or a loan finance charge is made; and

(d) either:

(i) the principal does not exceed fifty thousand dollars (\$50,000); or

(ii) the debt is secured by an interest in land or by personal property used or expected to be used as the principal dwelling of the debtor.

SECTION 29. IC 24-4.5-3-107 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 107. Definitions: "Lender"; "Precomputed"; "Principal" — (1) Except as otherwise provided, "lender" **means a person regularly engaged in making consumer loans. The term** includes an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

(2) A loan, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.

(3) "Principal" of a loan means the total of:

(a) the net amount paid to, receivable by, or paid or payable for the account of the debtor;

(b) the amount of any discount excluded from the loan finance charge (subsection (2) of 24-4.5-3-109); and

(c) to the extent that payment is deferred:

(i) amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in (a); and

(ii) additional charges permitted by this Chapter (24-4.5-3-202).

SECTION 30. IC 24-4.5-3-201, AS AMENDED BY P.L.57-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 201. Loan Finance Charge for Consumer Loans other than Supervised Loans—(1) Except as provided in subsections (6) and (8), with respect to a consumer loan other than a supervised loan (IC 24-4.5-3-501), a lender may contract for a loan finance charge, calculated according to the actuarial method, not exceeding twenty-one percent (21%) per year on the unpaid balances of the principal.

(2) **Except that not more than twenty-five percent (25%) of the**

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1 **loan finance charge on a consumer credit loan that is a mortgage**  
 2 **transaction may be precomputed**, this section does not limit or  
 3 restrict the manner of contracting for the loan finance charge, whether  
 4 by way of add-on, discount, or otherwise, so long as the rate of the loan  
 5 finance charge does not exceed that permitted by this section. If the  
 6 loan is precomputed:

7 (a) the loan finance charge may be calculated on the assumption  
 8 that all scheduled payments will be made when due; and

9 (b) the effect of prepayment is governed by the provisions on  
 10 rebate upon prepayment (IC 24-4.5-3-210).

11 (3) For the purposes of this section, the term of a loan commences  
 12 with the date the loan is made. Differences in the lengths of months are  
 13 disregarded, and a day may be counted as one-thirtieth (1/30) of a  
 14 month. Subject to classifications and differentiations the lender may  
 15 reasonably establish, a part of a month in excess of fifteen (15) days  
 16 may be treated as a full month if periods of fifteen (15) days or less are  
 17 disregarded and if that procedure is not consistently used to obtain a  
 18 greater yield than would otherwise be permitted. For purposes of  
 19 computing average daily balances, the creditor may elect to treat all  
 20 months as consisting of thirty (30) days.

21 (4) With respect to a consumer loan made pursuant to a revolving  
 22 loan account:

23 (a) the loan finance charge shall be deemed not to exceed the  
 24 maximum annual percentage rate if the loan finance charge  
 25 contracted for and received does not exceed a charge in each  
 26 monthly billing cycle which is one and three-fourths percent (1  
 27 3/4%) of an amount no greater than:

28 (i) the average daily balance of the debt;

29 (ii) the unpaid balance of the debt on the same day of the  
 30 billing cycle; or

31 (iii) subject to subsection (5), the median amount within a  
 32 specified range within which the average daily balance or the  
 33 unpaid balance of the debt, on the same day of the billing  
 34 cycle, is included; for the purposes of this subparagraph and  
 35 subparagraph (ii), a variation of not more than four (4) days  
 36 from month to month is "the same day of the billing cycle";

37 (b) if the billing cycle is not monthly, the loan finance charge  
 38 shall be deemed not to exceed the maximum annual percentage  
 39 rate if the loan finance charge contracted for and received does  
 40 not exceed a percentage which bears the same relation to  
 41 one-twelfth (1/12) the maximum annual percentage rate as the  
 42 number of days in the billing cycle bears to thirty (30); and

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(c) notwithstanding subsection (1), if there is an unpaid balance on the date as of which the loan finance charge is applied, the lender may contract for and receive a charge not exceeding fifty cents (\$0.50) if the billing cycle is monthly or longer, or the pro rata part of fifty cents (\$0.50) which bears the same relation to fifty cents (\$0.50) as the number of days in the billing cycle bears to thirty (30) if the billing cycle is shorter than monthly, but no charge may be made pursuant to this paragraph if the lender has made an annual charge for the same period as permitted by the provisions on additional charges (paragraph (c) of subsection (1) of IC 24-4.5-3-202).

(5) Subject to classifications and differentiations, the lender may reasonably establish and make the same loan finance charge on all amounts financed within a specified range. A loan finance charge does not violate subsection (1) if:

- (a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (1); and
- (b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) With respect to a consumer loan not made pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than thirty dollars (\$30). The minimum loan finance charge allowed under this subsection may be imposed only if:

- (a) the **borrower debtor** prepays in full a consumer loan, refinancing, or consolidation, regardless of whether the loan, refinancing, or consolidation is precomputed;
- (b) the loan, refinancing, or consolidation prepaid by the **borrower debtor** is subject to a loan finance charge that:
  - (i) is contracted for by the parties; and
  - (ii) does not exceed the rate prescribed in subsection (1); and
- (c) the loan finance charge earned at the time of prepayment is less than the minimum loan finance charge contracted for under this subsection.

(7) The amount of thirty dollars (\$30) in subsection (6) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 1992.

(8) In addition to the loan finance charge provided for in this

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section, a lender may contract for the following:

(a) With respect to a consumer loan that is not made under a revolving loan account, a loan origination fee of not more than two percent (2%) of the loan amount.

(b) With respect to a consumer loan that is made under a revolving loan account, a loan origination fee of not more than two percent (2%) of the line of credit that was contracted for.

(9) The charges provided for in subsection (8):

(a) are not subject to refund or rebate;

(b) are not permitted if a lender makes a settlement charge under IC 24-4.5-3-202(d)(ii); and

(c) are limited to two percent (2%) of the part of the loan that does not exceed two thousand dollars (\$2,000), if the loan is not primarily secured by an interest in land.

Notwithstanding subdivision (a), if a lender retains any part of a loan origination fee charged on a loan that is paid in full by a new loan from the same lender within three (3) months after the date of the prior loan, the lender may charge a loan origination fee only on that part of the new loan not used to pay the amount due on the prior loan, or in the case of a revolving loan, the lender may charge a loan origination fee only on the difference between the amount of the existing credit line and the increased credit line. This subsection does not prohibit a lender from contracting for and receiving a fee for preparing deeds, mortgages, reconveyance, and similar documents under IC 24-4.5-3-202(d)(ii), in addition to the charges provided for in subsection (8).

SECTION 31. IC 24-4.5-3-203.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 203.5. Delinquency Charges – (1) With respect to a consumer loan, refinancing, or consolidation, **other than a first lien mortgage transaction**, the parties may contract for a delinquency charge of not more than five dollars (\$5) on any installment or minimum payment due not paid in full within ten (10) days after its scheduled due date. **For a first lien mortgage transaction, the parties may contract for a delinquency charge of not more than five percent (5%) of the contracted payment amount.**

(2) A delinquency charge under this section may be collected only once on an installment however long it remains in default. With regard to a delinquency charge on consumer loans made under a revolving loan account, the delinquency charge may be applied each month that the payment is less than the minimum required payment on the account. A delinquency charge may be collected any time after it

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accrues. A delinquency charge may not be collected if the installment has been deferred and a deferral charge (IC 24-4.5-3-204) has been paid or incurred.

(3) **Except for a first lien mortgage transaction**, a delinquency charge may not be collected on an installment or payment due that is paid in full within ten (10) days after its scheduled due date even though an earlier maturing installment, minimum payment, or a delinquency charge on:

(a) an earlier installment; or

(b) payment due;

may not have been paid in full. For purposes of this subsection, payments are applied first to current installments or payments due and then to delinquent installments or payments due.

(4) If two (2) installments or parts of two (2) installments of a precomputed loan are in default for ten (10) days or more, the lender may elect to convert the loan from a precomputed loan to a loan in which the finance charge is based on unpaid balances. A lender that makes this election shall make a rebate under the provisions on rebates upon prepayment (IC 24-4.5-3-210) as of the maturity date of the first delinquent installment, and thereafter may make a loan finance charge as authorized by the provisions on loan finance charges for consumer loans (IC 24-4.5-3-201) or supervised loans (IC 24-4.5-3-508). The amount of the rebate shall not be reduced by the amount of any permitted minimum charge (IC 24-4.5-3-210). Any deferral charges made on installments due at or after the maturity date of the first delinquent installment shall be rebated, and no further deferral charges shall be made.

(5) The amount of five dollars (\$5) in subsection (1) is subject to change pursuant to the section on adjustment of dollar amounts (IC 24-4.5-1-106).

(6) If the parties provide by contract for a delinquency charge that is subject to change, the lender shall disclose in the contract that the amount of the delinquency charge is subject to change as allowed by IC 24-4.5-1-106.

SECTION 32. IC 24-4.5-3-209 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 209. Right to Prepay - (1) Subject to the provisions on rebate upon prepayment (IC 24-4.5-3-210), the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at any time without penalty. With respect to a consumer loan that is primarily secured by an interest in land, a lender may contract for a penalty for prepayment of the loan in full, not to exceed two percent (2%) of any amount

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prepaid within sixty (60) days of the date of the prepayment in full, after deducting all refunds and rebates as of the date of the prepayment. However, the penalty may not be imposed:

- (a) if the loan is refinanced or consolidated with the same creditor;
- (b) for prepayment by proceeds of any insurance or acceleration after default; or
- (c) after three (3) years from the contract date;
- (d) if the loan is a subprime mortgage transaction (as defined in IC 24-4.5-8-107); or**
- (e) after the second year following the closing of the loan if the loan is a high cost home loan other than a subprime loan, as provided in IC 24-9-4-1(2).**

(2) At the time of prepayment of a consumer loan not subject to the provisions of rebate upon prepayment (IC 24-4.5-3-210), the total finance charge, including the prepaid finance charge but excluding the loan origination fee allowed under IC 24-4.5-3-201, may not exceed the maximum charge allowed under this chapter for the period the loan was in effect. For the purposes of determining compliance with this subsection, the total finance charge does not include the following:

- (a) The loan origination fee allowed under IC 24-4.5-3-201.
- (b) The ~~borrower~~ **debtor** paid mortgage broker fee, if any, paid to a person who does not control, is not controlled by, or is not under common control with, the creditor holding the loan at the time a consumer loan is prepaid.

(3) The creditor or mortgage servicer shall provide an accurate payoff of the consumer loan to the debtor within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate consumer loan payoff amount. A creditor or mortgage servicer who fails to provide the accurate consumer loan payoff amount is liable for:

- (a) one hundred dollars (\$100) if an accurate consumer loan payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and
  - (b) the greater of:
    - (i) one hundred dollars (\$100); or
    - (ii) the loan finance charge that accrues on the loan from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate consumer loan payoff amount is provided;
- if an accurate consumer loan payoff amount is not provided by the

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1 creditor or mortgage servicer within ten (10) calendar days after  
 2 the creditor or mortgage servicer receives the debtor's second  
 3 written request, and the creditor or mortgage servicer failed to  
 4 comply with subdivision (a).

5 A liability under this subsection is an excess charge under  
 6 IC 24-4.5-5-202.

7 **(4) This subsection applies to a consumer credit loan that is a**  
 8 **mortgage transaction. The creditor or mortgage servicer shall**  
 9 **respond to a written offer made in connection with a proposed**  
 10 **short sale not later than ten (10) calendar days after the date of the**  
 11 **offer. As used in this subsection, "short sale" means a transaction**  
 12 **in which the property that is the subject of a mortgage transaction**  
 13 **is sold for an amount that is less than the amount of the debtor's**  
 14 **outstanding obligation under the mortgage transaction. A creditor**  
 15 **or mortgage servicer that fails to respond to an offer within the**  
 16 **time prescribed by this subsection is liable under the terms set**  
 17 **forth in subsection (3), as if the creditor or mortgage servicer had**  
 18 **failed to provide a consumer loan payoff amount.**

19 SECTION 33. IC 24-4.5-3-301 IS AMENDED TO READ AS  
 20 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 301. ~~(†) For the~~  
 21 ~~purposes of this section; "consumer loan" includes a loan secured~~  
 22 ~~primarily by an interest in land which is a mortgage transaction if the~~  
 23 ~~loan is otherwise a consumer loan (IC 24-4.5-3-104).~~

24 ~~(2)~~ **(1)** The lender shall disclose to the debtor to whom credit is  
 25 extended with respect to a consumer loan the information required by  
 26 the Federal Consumer Credit Protection Act.

27 ~~(3)~~ **(2)** For purposes of subsection ~~(2)~~; **(1)**, disclosures shall not be  
 28 required on a consumer loan if the transaction is exempt from the  
 29 Federal Consumer Credit Protection Act.

30 SECTION 34. IC 24-4.5-3-508, AS AMENDED BY P.L.57-2006,  
 31 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 32 JANUARY 1, 2009]: Sec. 508. Loan Finance Charge for Supervised  
 33 Loans – (1) With respect to a supervised loan, including a loan  
 34 pursuant to a revolving loan account, a supervised lender may contract  
 35 for and receive a loan finance charge not exceeding that permitted by  
 36 this section.

37 (2) The loan finance charge, calculated according to the actuarial  
 38 method, may not exceed the equivalent of the greater of either of the  
 39 following:

- 40 (a) the total of:  
 41 (i) thirty-six percent (36%) per year on that part of the unpaid  
 42 balances of the principal which is three hundred dollars (\$300)

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or less;

(ii) twenty-one percent (21%) per year on that part of the unpaid balances of the principal which is more than three hundred dollars (\$300) but does not exceed one thousand dollars (\$1,000); and

(iii) fifteen percent (15%) per year on that part of the unpaid balances of the principal which is more than one thousand dollars (\$1000); or

(b) twenty-one percent (21%) per year on the unpaid balances of the principal.

(3) **Except that not more than twenty-five percent (25%) of the loan finance charge on a consumer credit loan that is a mortgage transaction may be precomputed**, this section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed:

(a) the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-3-210).

(4) The term of a loan for the purposes of this section commences on the date the loan is made. Differences in the lengths of months are disregarded, and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations, the lender may reasonably establish and make the same loan finance charge on all principal amounts within a specified range. A loan finance charge does not violate subsection (2) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted in subsection (2); and

(b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) The amounts of three hundred dollars (\$300) and one thousand dollars (\$1,000) in subsection (2) and thirty dollars (\$30) in subsection (7) are subject to change pursuant to the provisions on adjustment of

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dollar amounts (IC 24-4.5-1-106). For the adjustment of the amount of thirty dollars (\$30), the Reference Base Index to be used is the Index for October 1992.

(7) With respect to a supervised loan not made pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than thirty dollars (\$30). The minimum loan finance charge allowed under this subsection may be imposed only if:

(a) the ~~borrower~~ **debtor** prepays in full a consumer loan, refinancing, or consolidation, regardless of whether the loan, refinancing, or consolidation is precomputed;

(b) the loan, refinancing, or consolidation prepaid by the ~~borrower~~ **debtor** is subject to a loan finance charge that:

(i) is contracted for by the parties; and

(ii) does not exceed the rate prescribed in subsection (2); and

(c) the loan finance charge earned at the time of prepayment is less than the minimum loan finance charge contracted for under this subsection.

SECTION 35. IC 24-4.5-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]:

**Chapter 8. Mortgage Transactions**

**Sec. 101. This chapter shall be known and may be cited as Uniform Consumer Credit Code—Mortgage Transactions.**

**Sec. 102. (1) Except as otherwise provided, all provisions of this article that apply to consumer credit sales and consumer loans apply to mortgage transactions.**

**(2) This chapter applies to a creditor and to any person that facilitates, enables, or acts as a conduit for any person that is or may be exempt from:**

(a) licensing under IC 24-4.5-3-502; or

(b) filing notification with the department under IC 24-4.5-6-202.

**(3) Except for the prohibition against prepayment penalties for subprime mortgage transactions under section 109 of this chapter, this chapter does not apply to:**

(a) a bank;

(b) a savings association;

(c) a credit union; or

(d) any other state or federally chartered financial institution.

**(4) A creditor's employee who originates mortgage transactions shall comply with the registration requirements established by the**

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rules, policies, and directives adopted or issued by the director or the department.

(5) The following do not apply to a person that is licensed or registered under IC 23-2-5:

(a) The licensing requirements set forth in IC 24-4.5-3-502.

(b) The notification requirements set forth in IC 24-4.5-6-202.

Sec. 103. The following definitions apply throughout this chapter:

"Mortgage transaction" Section 8-104

"Nontraditional mortgage transaction" Section 8-105

"Subprime debtor" Section 8-106

"Subprime mortgage transaction" Section 8-107

Sec. 104. "Mortgage transaction" means a consumer credit sale or consumer loan in which a mortgage, deed of trust, or land contract which constitutes a lien is created or retained against land upon which there is a dwelling (as defined in IC 24-4.5-1-301(23)) that is or will be used by the debtor primarily for personal, family, or household purposes.

Sec. 105. (1) "Nontraditional mortgage transaction" includes:

(a) interest-only;

(b) payment option; and

(c) negative amortization;

consumer credit sales and consumer loans.

(2) The term also includes an adjustable rate mortgage transaction (as defined in section 110(1) of this chapter) that:

(a) provides for lower payments during an initial period, followed by higher payments later in the amortization period; and

(b) contains other terms or conditions that distinguish the mortgage transaction from traditional mortgage transactions, as determined under rules, policies, and directives adopted or issued by the director or the department.

Sec. 106. "Subprime debtor" means a debtor who, at the time of the origination of a mortgage transaction, the creditor knew or should have known had a reduced or impaired repayment capacity based on the debtor's credit score, debt-to-income ratio, or reliability of income.

Sec. 107. "Subprime mortgage transaction" means a mortgage transaction in which the mortgagor is a subprime debtor.

Sec. 108. Subject to IC 24-4.5-2-203.5 and IC 24-4.5-3-203.5, the parties to a first lien mortgage transaction may contract for a delinquency charge that is payable with respect to any installment

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or minimum payment due that is not paid in full within ten (10) days after its scheduled due date. A delinquency charge allowed under this section may not exceed five percent (5%) of the contracted payment amount.

Sec. 109. The documents for a subprime mortgage transaction may not provide for, and a creditor issuing a subprime mortgage may not charge the debtor, prepayment penalties or fees.

Sec. 110. (1) As used in this section, "adjustable rate mortgage transaction" means a mortgage transaction with a rate that is subject to change at one (1) or more times during the term of the mortgage transaction.

(2) As used in this section, "fixed rate mortgage transaction" means a mortgage transaction with a rate that is not subject to change during the term of the mortgage transaction.

(3) As used in this section, "fully indexed rate" means:

(a) for a fixed rate mortgage transaction, the rate as of the date of closing;

(b) for an adjustable rate mortgage transaction in which the rate varies according to an index, the sum of the index rate as of the date of closing plus the maximum margin permitted at any time under the mortgage agreement; or

(c) for all other adjustable rate mortgage transactions, the maximum rate that may be charged during the term of the mortgage.

(4) Regardless of whether a mortgage transaction is originated by an employee of the creditor or by a third party, a creditor retains the responsibility for ensuring that the mortgage transaction complies with this chapter and with any rules, policies, and directives adopted or issued by the director or the department under this chapter.

(5) A creditor that offers:

(a) a nontraditional mortgage transaction; or

(b) a subprime mortgage transaction;

to a debtor must exercise prudent underwriting practices to determine and document the debtor's reasonable ability to repay the mortgage transaction at the mortgage transaction's fully indexed rate.

(6) If a creditor offers a subprime mortgage transaction to a debtor, the creditor shall establish an escrow account for the payment of real estate taxes and insurance owed in connection with the subprime mortgage transaction.

(7) This subsection applies to an adjustable rate mortgage

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1 transaction. At the same time that a creditor provides the good  
 2 faith estimates required under the federal Real Estate Settlement  
 3 Procedures Act (12 U.S.C. 2601 et seq.), as amended, the creditor  
 4 shall provide a prospective debtor with a one (1) page disclosure  
 5 document that includes the following information:

6 (a) The mortgage transaction's fully indexed rate.

7 (b) The maximum monthly payment that could be required  
 8 under the terms of the mortgage transaction. The maximum  
 9 monthly payment amount provided under this subdivision  
 10 must include the following:

11 (i) Subject to subsection (8), if the creditor will establish an  
 12 escrow account for the payment of taxes and insurance, a  
 13 good faith estimate of the amount of real estate taxes and  
 14 insurance payments that will be owed in connection with  
 15 the mortgaged property on a monthly basis.

16 (ii) If the creditor will not establish an escrow account for  
 17 the payment of taxes and insurance, a statement that the  
 18 maximum monthly payment amount reported in the  
 19 disclosure document does not include amounts that the  
 20 debtor will owe for real estate taxes and insurance  
 21 payments.

22 (8) A creditor, or any officer, agent, or employee of a creditor,  
 23 that provides as part of the disclosure document required under  
 24 subsection 7 a good faith estimate of the amount of real estate taxes  
 25 and insurance payments that will be owed in connection with  
 26 mortgaged property, as required by subsection (7)(b)(i), is not  
 27 liable to:

28 (a) the debtor;

29 (b) a subsequent purchaser of the mortgaged property; or

30 (c) any other person;

31 if the estimate provided in the disclosure document under  
 32 subsection (7) differs from the actual real estate taxes and  
 33 insurance payments owed in connection with the mortgaged  
 34 property at any time during the term of the mortgage transaction.

35 Sec. 111. (1) A person described in section 102(2) of this chapter  
 36 that violates this chapter:

37 (a) is subject to a civil penalty imposed by the department in  
 38 an amount not more than ten thousand dollars (\$10,000) per  
 39 occurrence;

40 (b) is subject to IC 24-4.5-5-202;

41 (c) commits a deceptive act under IC 24-5-0.5 and is subject  
 42 to the penalties set forth in IC 24-5-0.5;

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(d) except as provided in subsection (4), has no right to collect, receive, or retain any principal, interest, or other charges from a mortgage transaction; and

(e) except as provided in subsection (4), is liable to the debtor for actual damages, statutory damages of two thousand dollars (\$2,000) per violation, costs, and attorney's fees.

(2) The department may sue:

(a) to enjoin any conduct that constitutes or will constitute a violation of this chapter; and

(b) for other equitable relief.

(3) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a debtor. A debtor is not required to exhaust any administrative remedies under this section or any other applicable law.

(4) Subsection (1)(d) and (1)(e) does not apply if the violation is the result of an accident or a bona fide error of computation.

**Sec. 112. (1)** A person regularly engaged as a creditor in mortgage transactions shall post a bond with the department in an amount acceptable to the department but not less than three hundred thousand dollars (\$300,000).

(2) A bond posted under subsection (1) must continue in effect for two (2) years after the creditor ceases operation in Indiana. The bond must be available to:

(a) pay damages and penalties to a consumer harmed by a violation of this chapter; and

(b) fund regulatory costs incurred by the department in remedying violations of this chapter.

**Sec. 113.** A creditor engaged in mortgage transactions shall not commit nor cause to be committed any of the following acts:

(a) Threatening to use or using the criminal process in any state to collect on a mortgage transaction.

(b) Threatening to take action against a debtor that is prohibited by this chapter.

(c) Making a misleading or deceptive statement concerning:

(i) a mortgage transaction; or

(ii) a consequence of entering into a mortgage transaction.

(d) Engaging in unfair, deceptive, or fraudulent practices in the making of or collecting on a mortgage transaction.

**Sec. 114.** The department may adopt rules under IC 4-22-2 to implement this chapter.

SECTION 36. IC 24-5-0.5-2, AS AMENDED BY P.L.1-2007, SECTION 165, IS AMENDED TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2008]: Sec. 2. (a) As used in this chapter:

(1) "Consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible, except securities and policies or contracts of insurance issued by corporations authorized to transact an insurance business under the laws of the state of Indiana, with or without an extension of credit, to a person for purposes that are primarily personal, familial, charitable, agricultural, or household, or a solicitation to supply any of these things. However, the term includes the following:

(A) A transfer of structured settlement payment rights under IC 34-50-2.

(B) An unsolicited advertisement sent to a person by telephone facsimile machine offering a sale, lease, assignment, award by chance, or other disposition of an item of personal property, real property, a service, or an intangible.

(2) "Person" means an individual, corporation, the state of Indiana or its subdivisions or agencies, business trust, estate, trust, partnership, association, nonprofit corporation or organization, or cooperative or any other legal entity.

(3) "Supplier" means the following:

(A) A seller, lessor, assignor, or other person who regularly engages in or solicits consumer transactions, including soliciting a consumer transaction by using a telephone facsimile machine to transmit an unsolicited advertisement. The term includes a manufacturer, wholesaler, or retailer, whether or not the person deals directly with the consumer.

(B) A person who contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes a pyramid promotional scheme.

**(C) With respect to a deceptive act described in section 3(h) of this chapter, a creditor:**

**(i) as defined in IC 24-9-2-6, with respect to a home loan; or**

**(ii) as defined in IC 24-4.5-1-301(8), with respect to a mortgage transaction.**

(4) "Subject of a consumer transaction" means the personal property, real property, services, or intangibles offered or furnished in a consumer transaction.

(5) "Cure" as applied to a deceptive act, means either:

(A) to offer in writing to adjust or modify the consumer

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- 1 transaction to which the act relates to conform to the  
 2 reasonable expectations of the consumer generated by such  
 3 deceptive act and to perform such offer if accepted by the  
 4 consumer; or  
 5 (B) to offer in writing to rescind such consumer transaction  
 6 and to perform such offer if accepted by the consumer.  
 7 The term includes an offer in writing of one (1) or more items of  
 8 value, including monetary compensation, that the supplier  
 9 delivers to a consumer or a representative of the consumer if  
 10 accepted by the consumer.  
 11 (6) "Offer to cure" as applied to a deceptive act is a cure that:  
 12 (A) is reasonably calculated to remedy a loss claimed by the  
 13 consumer; and  
 14 (B) includes a minimum additional amount that is the greater  
 15 of:  
 16 (i) ten percent (10%) of the value of the remedy under  
 17 clause (A), but not more than four thousand dollars  
 18 (\$4,000); or  
 19 (ii) five hundred dollars (\$500);  
 20 as compensation for attorney's fees, expenses, and other costs  
 21 that a consumer may incur in relation to the deceptive act.  
 22 (7) "Uncured deceptive act" means a deceptive act:  
 23 (A) with respect to which a consumer who has been damaged  
 24 by such act has given notice to the supplier under section 5(a)  
 25 of this chapter; and  
 26 (B) either:  
 27 (i) no offer to cure has been made to such consumer within  
 28 thirty (30) days after such notice; or  
 29 (ii) the act has not been cured as to such consumer within a  
 30 reasonable time after the consumer's acceptance of the offer  
 31 to cure.  
 32 (8) "Incurable deceptive act" means a deceptive act done by a  
 33 supplier as part of a scheme, artifice, or device with intent to  
 34 defraud or mislead. The term includes a failure of a transferee of  
 35 structured settlement payment rights to timely provide a true and  
 36 complete disclosure statement to a payee as provided under  
 37 IC 34-50-2 in connection with a direct or indirect transfer of  
 38 structured settlement payment rights.  
 39 (9) "Pyramid promotional scheme" means any program utilizing  
 40 a pyramid or chain process by which a participant in the program  
 41 gives a valuable consideration exceeding one hundred dollars  
 42 (\$100) for the opportunity or right to receive compensation or

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other things of value in return for inducing other persons to become participants for the purpose of gaining new participants in the program. The term does not include ordinary sales of goods or services to persons who are not purchasing in order to participate in such a scheme.

(10) "Promoting a pyramid promotional scheme" means:

(A) inducing or attempting to induce one (1) or more other persons to become participants in a pyramid promotional scheme; or

(B) assisting another in promoting a pyramid promotional scheme.

(11) "Elderly person" means an individual who is at least sixty-five (65) years of age.

(12) "Telephone facsimile machine" means equipment that has the capacity to transcribe text or images, or both, from:

(A) paper into an electronic signal and to transmit that signal over a regular telephone line; or

(B) an electronic signal received over a regular telephone line onto paper.

(13) "Unsolicited advertisement" means material advertising the commercial availability or quality of:

(A) property;

(B) goods; or

(C) services;

that is transmitted to a person without the person's prior express invitation or permission, in writing or otherwise.

(b) As used in section 3(a)(15) of this chapter:

(1) "Directory assistance" means the disclosure of telephone number information in connection with an identified telephone service subscriber by means of a live operator or automated service.

(2) "Local telephone directory" refers to a telephone classified advertising directory or the business section of a telephone directory that is distributed by a telephone company or directory publisher to subscribers located in the local exchanges contained in the directory. The term includes a directory that includes listings of more than one (1) telephone company.

(3) "Local telephone number" refers to a telephone number that has the three (3) number prefix used by the provider of telephone service for telephones physically located within the area covered by the local telephone directory in which the number is listed. The term does not include long distance numbers or 800-, 888-, or

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900- exchange numbers listed in a local telephone directory.

SECTION 37. IC 24-5-0.5-3, AS AMENDED BY P.L.85-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) The following acts or representations as to the subject matter of a consumer transaction, made orally, in writing, or by electronic communication, by a supplier, are deceptive acts:

(1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have.

(2) That such subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not.

(3) That such subject of a consumer transaction is new or unused, if it is not and if the supplier knows or should reasonably know that it is not.

(4) That such subject of a consumer transaction will be supplied to the public in greater quantity than the supplier intends or reasonably expects.

(5) That replacement or repair constituting the subject of a consumer transaction is needed, if it is not and if the supplier knows or should reasonably know that it is not.

(6) That a specific price advantage exists as to such subject of a consumer transaction, if it does not and if the supplier knows or should reasonably know that it does not.

(7) That the supplier has a sponsorship, approval, or affiliation in such consumer transaction the supplier does not have, and which the supplier knows or should reasonably know that the supplier does not have.

(8) That such consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the supplier knows or should reasonably know that the representation is false.

(9) That the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a sale or lease in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if earning the benefit, rebate, or discount is contingent upon the occurrence of an event subsequent to the time the consumer agrees to the purchase or lease.

(10) That the supplier is able to deliver or complete the subject of the consumer transaction within a stated period of time, when the

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supplier knows or should reasonably know the supplier could not. If no time period has been stated by the supplier, there is a presumption that the supplier has represented that the supplier will deliver or complete the subject of the consumer transaction within a reasonable time, according to the course of dealing or the usage of the trade.

(11) That the consumer will be able to purchase the subject of the consumer transaction as advertised by the supplier, if the supplier does not intend to sell it.

(12) That the replacement or repair constituting the subject of a consumer transaction can be made by the supplier for the estimate the supplier gives a customer for the replacement or repair, if the specified work is completed and:

(A) the cost exceeds the estimate by an amount equal to or greater than ten percent (10%) of the estimate;

(B) the supplier did not obtain written permission from the customer to authorize the supplier to complete the work even if the cost would exceed the amounts specified in clause (A);

(C) the total cost for services and parts for a single transaction is more than seven hundred fifty dollars (\$750); and

(D) the supplier knew or reasonably should have known that the cost would exceed the estimate in the amounts specified in clause (A).

(13) That the replacement or repair constituting the subject of a consumer transaction is needed, and that the supplier disposes of the part repaired or replaced earlier than seventy-two (72) hours after both:

(A) the customer has been notified that the work has been completed; and

(B) the part repaired or replaced has been made available for examination upon the request of the customer.

(14) Engaging in the replacement or repair of the subject of a consumer transaction if the consumer has not authorized the replacement or repair, and if the supplier knows or should reasonably know that it is not authorized.

(15) The act of misrepresenting the geographic location of the supplier by listing a fictitious business name or an assumed business name (as described in IC 23-15-1) in a local telephone directory if:

(A) the name misrepresents the supplier's geographic location;

(B) the listing fails to identify the locality and state of the supplier's business;

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(C) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the calling area covered by the local telephone directory; and

(D) the supplier's business location is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory.

(16) The act of listing a fictitious business name or assumed business name (as described in IC 23-15-1) in a directory assistance data base if:

(A) the name misrepresents the supplier's geographic location;

(B) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the local calling area; and

(C) the supplier's business location is located in a county that is not contiguous to a county in the local calling area.

(17) That the supplier violated IC 24-3-4 concerning cigarettes for import or export.

(18) That a supplier knowingly sells or resells a product to a consumer if the product has been recalled, whether by the order of a court or a regulatory body, or voluntarily by the manufacturer, distributor, or retailer unless the product has been repaired or modified to correct the defect that was the subject of the recall.

(19) That the supplier violated 47 U.S.C. 227, including any rules or regulations issued under 47 U.S.C. 227.

(b) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such representation thereon or therein, or who authored such materials, and such other suppliers who shall state orally or in writing that such representation is true if such other supplier shall know or have reason to know that such representation was false.

(c) If a supplier shows by a preponderance of the evidence that an act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, such act shall not be deceptive within the meaning of this chapter.

(d) It shall be a defense to any action brought under this chapter that the representation constituting an alleged deceptive act was one made in good faith by the supplier without knowledge of its falsity and in reliance upon the oral or written representations of the manufacturer, the person from whom the supplier acquired the product, any testing

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organization, or any other person provided that the source thereof is disclosed to the consumer.

(e) For purposes of subsection (a)(12), a supplier that provides estimates before performing repair or replacement work for a customer shall give the customer a written estimate itemizing as closely as possible the price for labor and parts necessary for the specific job before commencing the work.

(f) For purposes of subsection (a)(15), a telephone company or other provider of a telephone directory or directory assistance service or its officer or agent is immune from liability for publishing the listing of a fictitious business name or assumed business name of a supplier in its directory or directory assistance data base unless the telephone company or other provider of a telephone directory or directory assistance service is the same person as the supplier who has committed the deceptive act.

(g) For purposes of subsection (a)(18), it is an affirmative defense to any action brought under this chapter that the product has been altered by a person other than the defendant to render the product completely incapable of serving its original purpose.

**(h) In addition to the acts set forth in subsection (a), a violation of:**

**(1) IC 24-9 (concerning home loans); or**

**(2) IC 24-4.5-8 (concerning mortgage transactions);**

**is a deceptive act under this chapter.**

SECTION 38. IC 24-5-0.5-4, AS AMENDED BY P.L.85-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) **Except as provided in subsection (l),** a person relying upon an uncured or incurable deceptive act may bring an action for the damages actually suffered as a consumer as a result of the deceptive act or five hundred dollars (\$500), whichever is greater. The court may increase damages for a willful deceptive act in an amount that does not exceed the greater of:

(1) three (3) times the actual damages of the consumer suffering the loss; or

(2) one thousand dollars (\$1,000).

Except as provided in subsection (j), the court may award reasonable attorney fees to the party that prevails in an action under this subsection. **Except for a deceptive act described in section 3(h) of this chapter, and except for purchases of time shares and camping club memberships,** this subsection does not apply to a consumer transaction in real property, including a claim or action involving a construction defect (as defined in IC 32-27-3-1(5)) brought against a

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1 construction professional (as defined in IC 32-27-3-1(4)). ~~except for~~  
 2 ~~purchases of time shares and camping club memberships.~~ This  
 3 subsection also does not apply to a violation of IC 24-4.7, IC 24-5-12,  
 4 or IC 24-5-14. Actual damages awarded to a person under this section  
 5 have priority over any civil penalty imposed under this chapter.

6 (b) Any person who is entitled to bring an action under subsection  
 7 (a) on the person's own behalf against a supplier for damages for a  
 8 deceptive act may bring a class action against such supplier on behalf  
 9 of any class of persons of which that person is a member and which has  
 10 been damaged by such deceptive act, subject to and under the Indiana  
 11 Rules of Trial Procedure governing class actions, except as herein  
 12 expressly provided. Except as provided in subsection (j), the court may  
 13 award reasonable attorney fees to the party that prevails in a class  
 14 action under this subsection, provided that such fee shall be determined  
 15 by the amount of time reasonably expended by the attorney and not by  
 16 the amount of the judgment, although the contingency of the fee may  
 17 be considered. Any money or other property recovered in a class action  
 18 under this subsection which cannot, with due diligence, be restored to  
 19 consumers within one (1) year after the judgment becomes final shall  
 20 be returned to the party depositing the same. **Except for a deceptive**  
 21 **act described in section 3(h) of this chapter, and except for**  
 22 **purchases of time shares and camping club memberships,** this  
 23 subsection does not apply to a consumer transaction in real property.  
 24 ~~except for purchases of time shares and camping club memberships.~~  
 25 Actual damages awarded to a class have priority over any civil penalty  
 26 imposed under this chapter.

27 (c) The attorney general may bring an action to enjoin a deceptive  
 28 act, **including a deceptive act described in section 3(h) of this**  
 29 **chapter.** However, **with respect to all other consumer transactions**  
 30 **involving real property,** the attorney general may seek to enjoin  
 31 patterns of incurable deceptive acts. ~~with respect to consumer~~  
 32 ~~transactions in real property.~~ In addition, the court may:

- 33 (1) issue an injunction;
- 34 (2) order the supplier to make payment of the money unlawfully
- 35 received from the aggrieved consumers to be held in escrow for
- 36 distribution to aggrieved consumers;
- 37 (3) order the supplier to pay to the state the reasonable costs of
- 38 the attorney general's investigation and prosecution related to the
- 39 action; and
- 40 (4) provide for the appointment of a receiver.

41 (d) In an action under subsection (a), (b), or (c), the court may void  
 42 or limit the application of contracts or clauses resulting from deceptive

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acts and order restitution to be paid to aggrieved consumers.

(e) In any action under subsection (a) or (b), upon the filing of the complaint or on the appearance of any defendant, claimant, or any other party, or at any later time, the trial court, the supreme court, or the court of appeals may require the plaintiff, defendant, claimant, or any other party or parties to give security, or additional security, in such sum as the court shall direct to pay all costs, expenses, and disbursements that shall be awarded against that party or which that party may be directed to pay by any interlocutory order by the final judgment or on appeal.

(f) **Except as provided in subsection (l)**, any person who violates the terms of an injunction issued under subsection (c) shall forfeit and pay to the state a civil penalty of not more than fifteen thousand dollars (\$15,000) per violation. For the purposes of this section, the court issuing an injunction shall retain jurisdiction, the cause shall be continued, and the attorney general acting in the name of the state may petition for recovery of civil penalties. Whenever the court determines that an injunction issued under subsection (c) has been violated, the court shall award reasonable costs to the state.

(g) If a court finds any person has knowingly violated section 3 or 10 of this chapter, other than section 3(a)(19) **or 3(h)** of this chapter, the attorney general, in an action pursuant to subsection (c), may recover from the person on behalf of the state a civil penalty of a fine not exceeding five thousand dollars (\$5,000) per violation.

(h) If a court finds that a person has violated section 3(a)(19) of this chapter, the attorney general, in an action under subsection (c), may recover from the person on behalf of the state a civil penalty as follows:

(1) For a knowing or intentional violation, one thousand five hundred dollars (\$1,500).

(2) For a violation other than a knowing or intentional violation, five hundred dollars (\$500).

A civil penalty recovered under this subsection shall be deposited in the consumer protection division telephone solicitation fund established by IC 24-4.7-3-6 to be used for the administration and enforcement of section 3(a)(19) of this chapter.

(i) An elderly person relying upon an uncured or incurable deceptive act, including an act related to hypnotism, may bring an action to recover treble damages, if appropriate.

(j) An offer to cure is:

(1) not admissible as evidence in a proceeding initiated under this section unless the offer to cure is delivered by a supplier to the consumer or a representative of the consumer before the supplier

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1 files the supplier's initial response to a complaint; and  
 2 (2) only admissible as evidence in a proceeding initiated under  
 3 this section to prove that a supplier is not liable for attorney's fees  
 4 under subsection (k).

5 If the offer to cure is timely delivered by the supplier, the supplier may  
 6 submit the offer to cure as evidence to prove in the proceeding in  
 7 accordance with the Indiana Rules of Trial Procedure that the supplier  
 8 made an offer to cure.

9 (k) A supplier may not be held liable for the attorney's fees and  
 10 court costs of the consumer that are incurred following the timely  
 11 delivery of an offer to cure as described in subsection (j) unless the  
 12 actual damages awarded, not including attorney's fees and costs, exceed  
 13 the value of the offer to cure.

14 **(l) The following apply to a deceptive act described in section**  
 15 **3(h) of this chapter:**

16 **(1) A person aggrieved by an uncured or incurable deceptive**  
 17 **act described in section 3(h) of this chapter may bring an**  
 18 **action under subsection (a) for the damages actually suffered**  
 19 **as a consumer as a result of the deceptive act. The court may**  
 20 **increase damages for a willful deceptive act in an amount that**  
 21 **does not exceed three (3) times the actual damages of the**  
 22 **consumer suffering the loss.**

23 **(2) For a violation of an injunction issued under subsection**  
 24 **(c), a civil penalty of not more than thirty thousand dollars**  
 25 **(\$30,000) may be imposed under subsection (f).**

26 **(3) If a court finds any person has knowingly violated section**  
 27 **3(h) of this chapter, the attorney general, in an action**  
 28 **pursuant to subsection (c), may recover from the person on**  
 29 **behalf of the state a civil penalty of a fine not exceeding ten**  
 30 **thousand dollars (\$10,000) per violation. A civil penalty**  
 31 **recovered under this subdivision shall be deposited in the**  
 32 **homeowner protection unit account established by**  
 33 **IC 4-6-12-9.**

34 **SECTION 39. IC 24-5-0.5-8 IS AMENDED TO READ AS**  
 35 **FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) Except as**  
 36 **provided in subsection (b), a person who commits an incurable**  
 37 **deceptive act is subject to a civil penalty of a fine of not more than five**  
 38 **hundred dollars (\$500) for each violation. The attorney general, acting**  
 39 **in the name of the state, has the exclusive right to petition for recovery**  
 40 **of such a fine, and this fine may be recovered only in an action brought**  
 41 **under section 4(c) of this chapter.**

42 **(b) A person who commits an incurable deceptive act described**

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in section 3(h) of this chapter is subject to a civil penalty of a fine of not more than one thousand dollars (\$1,000) for each violation. The attorney general, acting in the name of the state, has the exclusive right to petition for recovery of the fine, and the fine may be recovered only in an action brought under section 4(c) of this chapter.

SECTION 40. IC 24-9-3-1.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1.1. (a) As used in this section, "creditworthiness", with respect to a prospective borrower, means those factors likely to affect the prospective borrower's ability to repay a home loan at the home loan's trigger rate, including the following:

(1) The prospective borrower's present and future:

(A) income, not including overtime payments, seasonal compensation, or other irregular income;

(B) expenses, including property taxes and insurance payments owed in connection with the home that is the subject of the home loan;

(C) assets; and

(D) liabilities.

(2) The prospective borrower's credit history.

(3) Any other factor likely to affect the prospective borrower's ability to repay the home loan at the home loan's trigger rate.

(b) For purposes of this section, a creditor conducts a "reasonable inquiry" into a prospective borrower's creditworthiness if the creditor:

(1) obtains a consumer report (as defined in IC 24-5-24-2) or other information maintained by a consumer reporting agency (as defined in IC 24-5-24-3) with respect to the prospective borrower; and

(2) obtains information about the prospective borrower through:

(A) a current or past employer of the prospective borrower;

(B) public records; or

(C) any other legal or commercially reasonable means.

(c) As used in this section, "stated income or no documentation loan" means a home loan with respect to which a creditor:

(1) relies solely on a prospective borrower's written or oral statement of the prospective borrower's creditworthiness; and

(2) does not independently verify the accuracy of the

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prospective borrower's statement by conducting a reasonable inquiry into the prospective borrower's creditworthiness; in making an underwriting determination with respect to the prospective borrower.

(d) A creditor may not do either of the following:

(1) Recommend or issue a stated income or no documentation loan to a prospective borrower.

(2) Recommend or issue a home loan to a prospective borrower without reasonable grounds for determining that the home loan is suitable for the prospective borrower based on a reasonable inquiry into the prospective borrower's creditworthiness. A creditor, or any officer, agent, or employee of a creditor, that conducts a reasonable inquiry under this section is not liable to:

(A) a borrower or prospective borrower;

(B) a subsequent purchaser of a home that was the subject of a home loan on which a borrower has defaulted; or

(C) any other person;

for a determination made under this section, if a borrower for whom the creditor determines a home loan is suitable under this section later defaults on the home loan issued by the creditor.

SECTION 41. IC 24-9-3-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4.5. (a) This section applies to a home loan that first becomes sixty (60) days past due after June 30, 2008.

(b) Subject to subsection (c), whenever a home loan becomes sixty (60) days past due, the creditor, or a loan servicer acting on the creditor's behalf, shall provide written notice of the delinquency to the borrower. The notice required under this section must offer the borrower:

(1) a temporary forbearance with respect to the home loan, subject to:

(A) terms agreed upon by the creditor and the borrower; and

(B) any applicable increase in the outstanding principal balance of the home loan as allowed under IC 24-9-4-4(b);

(2) a payment plan; or

(3) any other option for the refinancing, restructuring, or workout of the existing indebtedness.

(c) Any option offered by the creditor under subsection (b) may not increase the interest rate on the home loan because of the

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delinquency. However, this subsection does not apply to interest rate changes in a variable rate home loan that are otherwise consistent with the provisions of the home loan documents, if the change in the interest rate is not triggered by the delinquency.

SECTION 42. IC 24-9-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. (a) A creditor may not charge a fee for informing or transmitting to a person the balance due to pay off a home loan or to provide a written release upon prepayment. A creditor must provide a payoff balance not later than ten (10) ~~business~~ **calendar** days after the request is received by the creditor. ~~(b)~~ For purposes of this ~~section~~; **subsection**, "fee" does not include actual charges incurred by a creditor for express or priority delivery requested by the borrower of home loan documents to the borrower.

**(b) A creditor, a servicer, or the creditor's agent shall respond to a written offer made in connection with a proposed short sale not later than ten (10) calendar days after the date of the offer. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a home loan is sold for an amount that is less than the amount of the borrower's outstanding obligation on the home loan. A creditor, a servicer, or a creditor's agent that fails to respond to an offer within the time prescribed by this subsection is liable under the terms set forth in IC 24-4.5-3-209(3), as if the creditor, servicer, or agent had failed to provide a consumer loan payoff amount.**

SECTION 43. IC 24-9-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 1. The following additional limitations and prohibited practices apply to a high cost home loan:

(1) A creditor making a high cost home loan may not directly or indirectly finance any points and fees.

**(2) For a high cost home loan other than a subprime mortgage transaction (as defined in IC 24-4.5-8-107):**

**(A)** prepayment fees or penalties may not be included in the loan documents for ~~a~~ **the** high cost home loan or charged to the borrower if the fees or penalties exceed in total two percent (2%) of the high cost home loan amount prepaid during the first twenty-four (24) months after the high cost home loan closing; **and**

~~(3)~~ **(B)** a prepayment penalty may not be contracted for after the second year following the high cost home loan closing.

**(3) For a high cost home loan that is a subprime mortgage**

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transaction (as defined in IC 24-4.5-8-107), the documents for the loan may not provide for, and a creditor issuing the loan may not charge the debtor, prepayment penalties or fees.

(4) A creditor may not include a prepayment penalty fee in a high cost home loan **described in subdivision (2)** unless the creditor offers the borrower the option of choosing a loan product without a prepayment fee. The terms of the offer must be made in writing and must be initialed by the borrower. The document containing the offer must be clearly labeled in large bold type and must include the following disclosure:

**"LOAN PRODUCT CHOICE**

I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product with a prepayment penalty."

(5) A creditor shall not sell or otherwise assign a high cost home loan without furnishing the following statement to the purchaser or assignee:

"NOTICE: This is a loan subject to special rules under IC 24-9. Purchasers or assignees may be liable for all claims and defenses with respect to the loan that the borrower could assert against the lender."

(6) A mortgage or deed of trust that secures a high cost home loan at the time the mortgage or deed of trust is recorded must prominently display the following on the face of the instrument:

"This instrument secures a high cost home loan as defined in IC 24-9-2-8."

(7) A creditor making a high cost home loan may not finance, directly or indirectly, any life or health insurance.

SECTION 44. IC 24-9-4.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

**Chapter 4.5. Residential Real Estate Closings**

**Sec. 1. This chapter applies to a home loan closing that takes place after June 30, 2008.**

**Sec. 2. As used in this chapter, "closing documents" refers to:**

(1) the documents that a settlement service provider is required to provide to a borrower at or before the closing of a home loan, in accordance with the requirements of the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) as amended;

(2) the form prescribed by the department of local government finance under IC 6-1.1-12-43(b);

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(3) the form required to be provided by a closing agent under IC 6-1.1-12-43(d)(2); and

(4) any other documents required by law to be provided to a borrower at or before the closing of a home loan.

Sec. 3. (a) As used in this chapter, "settlement service provider" means a person that provides services in connection with the closing of a real estate transaction, including the provision of title examinations or title insurance.

(b) The term includes a closing agent (as defined in IC 6-1.1-12-43(a)(2)).

Sec. 4. A creditor shall provide a prospective borrower with a notice that states that the prospective borrower has a right to receive, at least forty-eight (48) hours before the closing of a home loan, the closing documents with respect to the home loan. The creditor shall provide the notice required by this section at the same time that the creditor provides the good faith estimates required under the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) as amended.

Sec. 5. Not later than forty-eight (48) hours before the closing of a home loan, a settlement service provider shall make available to the borrower the closing documents with respect to the home loan. The settlement service provider shall make the closing documents available to the borrower:

(1) at the office of the creditor or the settlement service provider;

(2) through the United States mail;

(3) by facsimile; or

(4) through any other commercially reasonable means.

SECTION 45. IC 24-9-5-4, AS AMENDED BY P.L.3-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) A person who violates this article is liable to a person who is a party to the home loan transaction that gave rise to the violation for the following:

(1) Actual damages, including consequential damages. A person is not required to demonstrate reliance in order to receive actual damages.

(2) Statutory damages equal to ~~two (2)~~ **four (4)** times the finance charges agreed to in the home loan agreement.

(3) Costs and reasonable attorney's fees.

(b) A person may be granted injunctive, declaratory, and other equitable relief as the court determines appropriate in an action to enforce compliance with this chapter.

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(c) The right of rescission granted under 15 U.S.C. 1601 et seq. for a violation of the federal Truth in Lending Act (15 U.S.C. 1601 et seq.) is available to a person acting only in an individual capacity by way of recoupment as a defense against a party foreclosing on a home loan at any time during the term of the loan. Any recoupment claim asserted under this provision is limited to the amount required to reduce or extinguish the person's liability under the home loan plus amounts required to recover costs, including reasonable attorney's fees. This article shall not be construed to limit the recoupment rights available to a person under any other law.

(d) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a person. Except as provided in subsection (e), a person is not required to exhaust any administrative remedies under this article or under any other applicable law.

(e) Before bringing an action regarding an alleged deceptive act under this chapter, a person must:

- (1) notify the homeowner protection unit established by IC 4-6-12-2 of the alleged violation giving rise to the action; and
- (2) allow the homeowner protection unit at least ninety (90) days to institute appropriate administrative and civil action to redress a violation.

(f) An action under this chapter must be brought within five (5) years after the date that the person knew, or by the exercise of reasonable diligence should have known, of the violation of this article.

(g) An award of damages under subsection (a) has priority over a civil penalty imposed under this article.

SECTION 46. IC 24-9-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. A person who knowingly or intentionally violates this article commits:

- (1) a Class ~~A misdemeanor~~; **D felony**; and
- (2) an act that is actionable by the attorney general under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5.

SECTION 47. IC 24-9-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) The attorney general may bring an action to enjoin a violation of this article. A court in which the action is brought may:

- (1) issue an injunction;
- (2) order a person to make restitution;
- (3) order a person to reimburse the state for reasonable costs of the attorney general's investigation and prosecution of the violation of this article; and

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(4) impose a civil penalty of not more than ~~ten~~ **twenty** thousand dollars ~~(\$10,000)~~ **(\$20,000)** per violation.

(b) A person who violates an injunction under this section is subject to a civil penalty of not more than ~~ten~~ **twenty** thousand dollars ~~(\$10,000)~~ **(\$20,000)** per violation.

(c) The court that issues an injunction retains jurisdiction over a proceeding seeking the imposition of a civil penalty under this section.

SECTION 48. IC 25-34.1-8-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. **(a)** To be licensed or certified as a real estate appraiser, an individual must meet the following conditions:

(1) Not have a conviction for any of the following:

(A) An act that would constitute a ground for disciplinary sanction under IC 25-1-11.

(B) A crime that has a direct bearing on the individual's ability to practice competently.

(C) Fraud or material deception in the course of professional services or activities.

(D) A crime that indicates the individual has the propensity to endanger the public.

(2) Have satisfied the requirements established under IC 25-34.1-3-8(f).

**(b) After June 30, 2008, the board shall require each applicant for initial licensure or certification under this chapter to submit fingerprints for a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for use by the board in determining whether the applicant should be denied licensure or certification under this chapter for any reason set forth in subsection (a)(1). The applicant shall pay any fees or costs associated with the fingerprints and background check required under this subsection. The board may not release the results of a background check described in this subsection to any private entity.**

**(c) The board may request evidence of compliance with this section in accordance with subsection (d). Evidence of compliance with this section may include any of the following:**

**(1) Subject to subsections (b) and (d)(2), criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation.**

**(2) Credit histories.**

**(3) Other background checks considered necessary by the**

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board.

(d) The board may request evidence of compliance with this section at any of the following times:

(1) The time of application for an initial license or certificate.

(2) The time of renewal of a license or certificate. However, if the board seeks evidence of compliance through a criminal background check described in subsection (c)(1), the board must consider:

(A) the resources and staffing available to the state police department to process or conduct a criminal background check in a timely manner;

(B) the length of time that has elapsed since the most recent criminal background check was conducted with respect to the applicant for renewal; and

(C) the financial or administrative burdens that a criminal background check will place on the applicant for renewal.

(3) Any other time considered necessary by the board.

(e) The commission, upon recommendation of the board, shall adopt rules under IC 4-22-2 to implement this section.

SECTION 49. IC 27-7-3-15.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15.5. (a) Not later than January 1, 2009, the department shall establish and maintain a data base that serves as a central repository for the sales disclosure form data submitted to the department by county assessors under IC 6-1.1-5.5-3. The department shall make the information stored in the data base accessible to:

(1) each entity described in IC 4-6-12-4; and

(2) the homeowner protection unit established under IC 4-6-12-2.

(b) The department shall establish uniform procedures for:

(1) receiving and storing the information received from county assessors under IC 6-1.1-5.5-3; and

(2) transmitting, or otherwise making available, the information stored in the data base to:

(A) each entity described in IC 4-6-12-4; and

(B) the homeowner protection unit established under IC 4-6-12-2.

SECTION 50. IC 32-29-7-3, AS AMENDED BY P.L.240-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) In a proceeding for the foreclosure of a mortgage executed on real estate, process may not issue for the

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1 execution of a judgment or decree of sale for a period of three (3)  
2 months after the filing of a complaint in the proceeding. However:

3 (1) the period is:

4 (A) twelve (12) months in a proceeding for the foreclosure of  
5 a mortgage executed before January 1, 1958; and

6 (B) six (6) months in a proceeding for the foreclosure of a  
7 mortgage executed after December 31, 1957, but before July  
8 1, 1975; and

9 (2) if the court finds that the mortgaged real estate is residential  
10 real estate and ~~has been abandoned~~, **is vacant**, a judgment or  
11 decree of sale may be executed on the date the judgment of  
12 foreclosure or decree of sale is entered, regardless of the date the  
13 mortgage is executed.

14 (b) A judgment and decree in a proceeding to foreclose a mortgage  
15 that is entered by a court having jurisdiction may be filed with the clerk  
16 in any county as provided in IC 33-32-3-2. **Subject to subsection (i)**,  
17 after the period set forth in subsection (a) expires, a person who may  
18 enforce the judgment and decree may file a praecipe with the clerk in  
19 any county where the judgment and decree is filed, and the clerk shall  
20 promptly issue and certify to the sheriff of that county a copy of the  
21 judgment and decree under the seal of the court.

22 (c) Upon receiving a certified judgment under subsection (b), the  
23 sheriff shall, subject to section 4 of this chapter **and subsection (i)**, sell  
24 the mortgaged premises or as much of the mortgaged premises as  
25 necessary to satisfy the judgment, interest, and costs at public auction  
26 at the office of the sheriff or at another location that is reasonably likely  
27 to attract higher competitive bids. The sheriff shall schedule the date  
28 and time of the sheriff's sale for a time certain between the hours of 10  
29 a.m. and 4 p.m. on any day of the week except Sunday.

30 (d) Before selling mortgaged property, the sheriff must advertise the  
31 sale by publication once each week for three (3) successive weeks in  
32 a daily or weekly newspaper of general circulation. The sheriff shall  
33 publish the advertisement in at least one (1) newspaper published and  
34 circulated in each county where the real estate is situated. The first  
35 publication shall be made at least thirty (30) days before the date of  
36 sale. At the time of placing the first advertisement by publication, the  
37 sheriff shall also serve a copy of the written or printed notice of sale  
38 upon each owner of the real estate. Service of the written notice shall  
39 be made as provided in the Indiana Rules of Trial Procedure governing  
40 service of process upon a person. The sheriff shall charge a fee of ten  
41 dollars (\$10) to one (1) owner and three dollars (\$3) to each additional  
42 owner for service of written notice under this subsection. The fee is:

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- (1) a cost of the proceeding;
- (2) to be collected as other costs of the proceeding are collected;
- and
- (3) to be deposited in the county general fund for appropriation for operating expenses of the sheriff's department.

(e) The sheriff also shall post written or printed notices of the sale in at least three (3) public places in each township in which the real estate is situated and at the door of the courthouse of each county in which the real estate is located.

(f) If the sheriff is unable to procure the publication of a notice within the county, the sheriff may dispense with publication. The sheriff shall state that the sheriff was not able to procure the publication and explain the reason why publication was not possible.

(g) Notices under subsections (d) and (e) must contain a statement, for informational purposes only, of the location of each property by street address, if any, or other common description of the property other than legal description. A misstatement in the informational statement under this subsection does not invalidate an otherwise valid sale.

(h) The sheriff may charge an administrative fee of not more than two hundred dollars (\$200) with respect to a proceeding referred to in subsection (b) for actual costs directly attributable to the administration of the sale under subsection (c). The fee is:

- (1) payable by the person seeking to enforce the judgment and decree; and
- (2) due at the time of filing of the praecipe;

under subsection (b).

**(i) This subsection applies to a foreclosure proceeding that is initiated by the filing of a complaint by the mortgagee or the mortgagee's assignee after June 30, 2008. Not later than five (5) business days after the filing of a praecipe under subsection (b), the clerk shall issue and certify to the sheriff of the county a copy of the judgment or decree under the seal of the court. The sheriff shall conduct the sale required by subsection (c) not later than ninety (90) days after receipt of the judgment or decree from the clerk under this subsection.**

SECTION 51. IC 34-30-2-16.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 16.6. IC 6-1.1-12-43 (Concerning a closing ~~agent's agent~~ for failure to provide ~~a form~~ a **customer with certain forms** concerning property tax benefits, **or for any determination made with respect to a customer's eligibility for a benefit**).

SECTION 52. IC 34-30-2-96.4 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS  
[EFFECTIVE JULY 1, 2008]: **Sec. 96.4. IC 24-4.5-8-110(8)**  
**(Concerning a creditor's estimate of the monthly real estate taxes**  
**and insurance payments that will be owed in connection with**  
**property in a mortgage transaction).**

SECTION 53. IC 34-30-2-96.7 IS ADDED TO THE INDIANA  
CODE AS A NEW SECTION TO READ AS FOLLOWS  
[EFFECTIVE JULY 1, 2008]: **Sec. 96.7. IC 24-9-3-1.1 (Concerning**  
**a creditor's determination that a home loan is suitable for a**  
**borrower).**

SECTION 54. THE FOLLOWING ARE REPEALED [EFFECTIVE  
JANUARY 1, 2009]: IC 24-4.5-3-105; IC 24-4.5-5-201.

SECTION 55. [EFFECTIVE UPON PASSAGE] (a) **As used in this**  
**SECTION, "task force" refers to the mortgage lending and fraud**  
**prevention task force created under subsection (b).**

(b) **Not later than May 1, 2008, the following agencies shall**  
**create the mortgage lending and fraud prevention task force by**  
**each appointing an equal number of representatives to serve on the**  
**task force:**

(1) **The securities division of the office of the secretary of state**  
**established under IC 23-19-6-1(a).**

(2) **The homeowner protection unit established by the**  
**attorney general under IC 4-6-12-2.**

(3) **The department of financial institutions established by**  
**IC 28-11-1-1.**

(4) **The department of insurance created by IC 27-1-1-1.**

(5) **The Indiana real estate commission created by**  
**IC 25-34.1-2-1.**

(6) **The real estate appraiser licensure and certification board**  
**created by IC 25-34.1-8-1.**

(c) **The members of the task force shall annually appoint a chair**  
**from among the members of the task force. Each year, the**  
**chairmanship shall rotate among the agencies set forth in**  
**subsection (b).**

(d) **Subject to subsection (e), beginning not later than July 2008,**  
**the task force shall meet each month to:**

(1) **coordinate the state's efforts to:**

(A) **regulate the various participants involved in**  
**originating, issuing, and closing home loans;**

(B) **enforce state laws and rules concerning mortgage**  
**lending practices and mortgage fraud; and**

(C) **prevent fraudulent practices in the home loan industry**

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1 and investigate and prosecute cases involving mortgage  
 2 fraud; and  
 3 (2) share information and resources necessary for the efficient  
 4 administration of the tasks set forth in subdivision (1).

5 (e) With respect to any meeting of the task force:

6 (1) one (1) or more members of the task force may participate  
 7 in the meeting; or

8 (2) the meeting may be conducted in its entirety;  
 9 by means of a conference telephone or similar communications  
 10 equipment by which all persons participating in the meeting can  
 11 communicate with each other. Participation by the means  
 12 described in this subsection constitutes presence in person at the  
 13 meeting.

14 (f) Beginning in 2008, not later than November 1 of each year,  
 15 the task force shall report to the legislative council on the activities  
 16 of the task force during the most recent state fiscal year. The  
 17 report required under this subsection must include:

18 (1) information on the regulatory activities of each agency  
 19 described in subsection (b), including a description of any:

20 (A) investigations conducted; or

21 (B) disciplinary actions taken or criminal prosecutions  
 22 pursued;

23 with respect to the professions involved in originating, issuing,  
 24 and closing home loans;

25 (2) a description of any challenges:

26 (A) encountered by the task force during the most recent  
 27 state fiscal year; or

28 (B) anticipated by the task force in the current state fiscal  
 29 year; in

30 carrying out the duties set forth in subsection (d);

31 (3) any additional information required by the legislative  
 32 council; and

33 (4) any recommendations by the task force for legislation  
 34 necessary to assist the task force in carrying out the duties set  
 35 forth in subsection (d).

36 A report to the legislative council under this subsection must be in  
 37 an electronic format under IC 5-14-6.

38 SECTION 56. [EFFECTIVE UPON PASSAGE] (a) As used in this  
 39 SECTION, "authority" refers to the Indiana housing and  
 40 community development authority created by IC 5-20-1-3.

41 (b) Notwithstanding IC 6-3.1-32-15, as added by this act, the  
 42 authority shall adopt rules to certify home ownership education

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efforts under IC 6-3.1-32, as added by this act, in the same manner as emergency rules are adopted under IC 4-22-2-37.1. Any rules adopted under this SECTION must be adopted not later than September 1, 2008. A rule adopted under this SECTION expires on the earlier of:

(1) the date the rule is adopted by the authority under IC 4-22-2-24 through IC 4-22-2-36; or

(2) January 1, 2010.

(c) This SECTION expires January 1, 2010.

SECTION 57. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "authority" refers to the Indiana housing and community development authority created by IC 5-20-1-3.

(b) As used in this SECTION, "mortgage transaction" has the meaning set forth in IC 24-4.5-8-104.

(c) Not later than November 1, 2008, the authority shall provide a report to the legislative council that includes the following:

(1) An identification of:

(A) new sources of funding that can be used to assist Indiana homeowners in refinancing their existing mortgage transactions; or

(B) existing sources of funding that can be directed or redirected to assist Indiana homeowners in refinancing their existing mortgage transactions;

in order to prevent the foreclosure of the homes secured by homeowners' existing mortgage transactions.

(2) A plan for the rehabilitation of neighborhoods or communities in Indiana that have been adversely or disproportionately affected by mortgage foreclosures. The plan required by this subdivision must include an identification of the following:

(A) The areas in Indiana that have been adversely or disproportionately affected by mortgage foreclosures, including any statistics or data used to identify the areas.

(B) New or existing sources of funding that can be directed or redirected to the proposed rehabilitation efforts.

(3) Any recommendations for legislation that the authority determines is needed to accomplish the objectives described in subdivisions (1) and (2).

(4) Any other recommendations of the authority concerning:

(A) the prevention of mortgage foreclosures; or

(B) the rehabilitation of neighborhoods or communities adversely or disproportionately affected by mortgage

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1                   foreclosures.

2           (d) The report to the legislative council required by this  
3   SECTION must be in an electronic format under IC 5-14-6.

4           (e) This SECTION expires January 1, 2010.

5           SECTION 58. [EFFECTIVE UPON PASSAGE] (a) As used in this  
6   SECTION, "commissioner" refers to the securities commissioner  
7   appointed under IC 23-19-6-1.

8           (b) As used in this SECTION, "director" refers to the director  
9   of the department of financial institutions appointed under  
10   IC 28-11-2-1.

11          (c) The commissioner and the director shall cooperate to  
12   determine the appropriate state agency or department to oversee  
13   the regulation of a person that is, has been, or may be subject to  
14   regulation, licensure, or registration under both:

15           (1) IC 23-2-5; and

16           (2) IC 24-4.5, as amended by this act.

17          (d) The commissioner and the director shall issue joint  
18   guidelines to address the appropriate regulation of a person  
19   described in subsection (c) not later than September 1, 2008. The  
20   joint guidelines issued under this subsection must include any  
21   recommendations for legislation needed to implement the  
22   appropriate regulation of a person described in subsection (c), as  
23   determined by the commissioner and the director.

24          (e) This SECTION expires January 1, 2010.

25          SECTION 59. [EFFECTIVE UPON PASSAGE] (a) As used in this  
26   SECTION, "board" refers to the real estate appraiser licensure  
27   and certification board created by IC 25-34.1-8-1.

28          (b) As used in this SECTION, "commission" refers to the  
29   Indiana real estate commission created by IC 25-34.1-2-1.

30          (c) Notwithstanding IC 25-34.1-8-10(e), as added by this act, the  
31   commission shall adopt rules to implement IC 25-34.1-8-10, as  
32   amended by this act, in the same manner as emergency rules are  
33   adopted under IC 4-22-2-37.1. Not later than May 1, 2008, the  
34   board shall make recommendations to the commission concerning  
35   the rules needed to implement IC 25-34.1-8-10, as amended by this  
36   act. The commission shall adopt any emergency rules under this  
37   SECTION not later than June 1, 2008. An emergency rule adopted  
38   under this SECTION:

39           (1) takes effect on July 1, 2008; and

40           (2) expires on the earlier of:

41           (A) the date the rule is adopted by the commission under  
42   IC 4-22-2-24 through IC 4-22-2-36; or

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1                   **(B) January 1, 2010.**  
2                   **(d) This SECTION expires January 1, 2010.**  
3                   SECTION 60. [EFFECTIVE UPON PASSAGE] (a)  
4                   Notwithstanding IC 6-1.1-5.5-5, IC 6-1.1-12-2, and IC 6-1.1-20.9-3,  
5                   all as amended by this act, the department of local government  
6                   finance shall revise the sales disclosure form required under  
7                   IC 6-1.1-5.5-5, as amended by this act, to comply with  
8                   IC 6-1.1-5.5-5, as amended by this act, not later than June 1, 2008.  
9                   **(b) This SECTION expires January 1, 2010.**  
10                  SECTION 61. An emergency is declared for this act.

**C  
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y**



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1360, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BARDON, Chair

Committee Vote: yeas 8, nays 1.

**C  
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y**

